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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2008–1097; Amendment No. 91–312]

RIN 2120–AJ31

Aircraft Noise Certification Documents for International Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the operating rules to require U.S. operators flying outside the United States to carry aircraft noise certification information on board the aircraft. This rule is intended to ensure that affected U.S. operators have the appropriate noise certification information on board when they fly outside the United States as required by the International Civil Aviation Organization (ICAO), and to ensure compliance between domestic U.S. regulations and ICAO Annex 16, Amendment 8.

DATES: This amendment becomes effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Laurette Fisher, Office of Environment and Energy, AEE–100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3561; facsimile (202) 267–5594, e-mail *Laurette.fisher@faa.gov.* For legal questions concerning this final rule contact Karen Petronis, Senior Attorney for Regulations, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073, e-mail *Karen.petronis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This proposed regulation is within the scope of that authority since it would require certain operators to carry on board documentation listing the noise characteristics of the aircraft. These characteristics are already contained in the aircraft flight manual and approved as part of the aircraft's airworthiness certification, and compliance with 14 CFR part 36.

Background

On October 23, 2008, the FAA published a notice of proposed rulemaking (NPRM) proposing to amend 14 CFR part 91 to add a new paragraph in § 91.703 to require the carriage of noise certification documents on board aircraft that leave the United States (73 FR 63098). A brief history of the FAA's regulation of aircraft noise certification requirements (14 CFR part 36) was presented in the preamble of the NPRM.

The FAA proposed requiring affected operators that fly outside the United States using aircraft subject to the International Civil Aviation Organization (ICAO) Annex 16 [1] to carry aircraft noise certification information on board the aircraft. As stated in the NPRM, the ICAO adopted this requirement in Amendment 8 of Annex 16, Volume 1 on February 23, 2005, and it became effective on November 24, 2005. Paragraph 1.4 of Annex 16 now requires that "documents attesting noise certification shall be approved by the State of Registry and required by that State to be carried on the aircraft."

The current U.S. regulations in part 36 (§§ 36.1581 and 36.1583) describe the specific noise certification data requirements that need to be included in an FAA-approved Airplane Flight Manual (AFM) or Rotorcraft Flight Manual (RFM) as part of an aircraft's certification. However, there is no specific operating requirement for the entire FAA-approved AFM/RFM to be carried on board an aircraft, including the noise certification data. In the United States, we have relied on the fact that no airworthiness certificate will be issued unless an aircraft complies with the applicable noise requirements in part 36. Accordingly, we have never implemented a separate operating rule that requires the data be on board the aircraft. The addition of this requirement is meant to satisfy the ICAO standard since other countries may not recognize the underlying U.S. system.

For U.S. air carriers operating under part 121, a carrier is allowed to create an Aircraft Operations Manual (AOM) or a Flight Crew Operating Manual (FCOM) as an alternative to the AFM to be carried on board the aircraft. That manual typically contains only the aircraft limitations and performance information from the FAA-approved AFM. The AOM or FCOM may or may not contain the noise characteristics pages from the FAA-approved AFM, depending on the operator's needs and the manual's organization. This rule requires all U.S. operators to carry the appropriate noise certification information on board when they fly outside the United States.

The issue of noise documentation was undertaken by the Certificate Task Group (CTG) of the ICAO's Committee on Aviation Environmental Protection Noise Technical Working Group. As a member State of ICAO, the United States participates in this task group. A more in-depth discussion of the task group's activities may be found in the preamble to the NPRM for this rule.

The CTG considered various options for standardization of documents to be carried by aircraft operators. The ICAO member States use a variety of administrative systems, with differing requirements for noise documentation at certification and for designating documents that must be carried on board. The CTG proposed three options designed to accommodate the varying certification practices and existing regulatory systems of its member States.

[1] ICAO Annex 16, Volume I, Part II. Chapter 1, Paragraph 1,1 states that: *The provisions of 1.2 to 1.6 shall apply to all aircraft included in the classifications defined for noise certification purposes in Chapters 2, 3, 4, 5, 6, 8, 10, 11 and 12 of this part where such aircraft are engaged in international air navigation.*

The three options were incorporated into a new Attachment G to Annex 16, Volume 1, Amendment 8. Attachment G describes the three options to satisfy the certification documentation requirements of Sections 1.4 and 1.5 as follows:

1. A stand-alone State-issued noise certificate in which the mandatory information requirements of Annex 16, Volume 1, are contained in a single document.

2. Two complementary documents, one of which may be the Airplane Flight Manual (AFM) or the Airline Operations Manual (AOM).

3. Three complementary documents.

As explained in the NPRM, Option 1 is not available to U.S. operators. The FAA does not have the statutory authority required to issue stand-alone noise certificates.

Option 2, which requires the carriage of two complementary documents, accommodates those ICAO member States, including the United States, that do not include all noise certification data on a single certificate.

Option 3, which requires three documents, was designed for other member States and would be more burdensome than option 2.

ICAO Option 2 Compliance

For U.S. operators, the first document is the aircraft airworthiness certificate issued by the FAA. An aircraft must meet the noise certification requirements of part 36 in order to be issued an airworthiness certificate, and it is already required to be carried on board.

The second document is one that contains the noise certification data that is already contained in the AFM/RFM, but not required under current U.S. regulation to be carried on board. Operators that currently carry the noise data on board in the AFM, RFM, AOM, or FCOM may already satisfy ICAO option 2 and this regulation.

Operators that do not carry the noise certification data as part of one of those documents have several choices. One is to incorporate the approved data as part of on-board manuals. One of the limits of this option is that noise certification data is often contained in different parts of the original flight manuals, and could be burdensome to locate, incorporate, and access.

Operators may choose to create and carry a separate document containing the noise certification data required by ICAO. Annex 16 does not specify the format for that information, and neither does this regulation.

Before ICAO changed Annex 16 to make the carriage of noise data mandatory, the FAA had published a draft Advisory Circular (AC) (70 FR 60127, October 14, 2005) that recommended that U.S. operators be prepared to produce noise certification data when operating outside of the United States. That draft AC also included a suggested format for the data. Before that AC was made final, ICAO made data carriage mandatory. In response, the FAA realized that a regulatory change was needed and that advisory material was no longer appropriate. The AC was never finalized.

When we proposed this rule change in 2008, we included an almost-identical version of the form from the draft AC as an optional means of gathering the AFM/RFM noise data that would satisfy the ICAO requirements as the second document for Option 2. That suggested form is also included here as one method of ensuring that the already approved data is easily accessed. Operators are free to adopt other ways to carry the data as fits their operations.

Comments to the NPRM

The FAA received 8 comments in response to the NPRM. Comments were submitted by four operators, two individuals, one industry association and one aircraft manufacturer. All the commenters except one supported the proposed rule.

The NPRM sought input on the form in which the information is to be carried and included the draft optional form that included the information already in the possession of operators and required by Annex 16. Five of the commenters suggested that operators be allowed to determine the format in which noise certification data is to be carried, and where on the aircraft it will be kept. Ameristar Air Cargo suggested it be made part of an operator's operations specifications because an additional document would be burdensome. FedEx Express indicated it had developed its own form and has been using it successfully in several ICAO countries since the FAA issued the draft AC in 2005. Continental Airlines indicated that it has chosen to maintain the information in graph form as it appears in its airplane flight manuals from the manufacturers. Gulfstream Aerospace also stated that it had developed its own certificate for its customer that it believes meets the intent of the proposed regulation.

The FAA agrees that operators are free to use whatever format works best for them as long as the information required by Annex 16 is available to the flight crew. It can be a form developed by a manufacturer, or by the operator for its own use. Operators may choose to incorporate the applicable pages from an FAA-approved flight manual, or they may transfer that data to an optional form such as the one provided as an example in the rule. As long as the information required by Annex 16 Sections 1.4 and 1.5 is included for individual aircraft and accessible to the flight crew, an operator will be in compliance with this regulation.

We disagree that the operations specifications are an appropriate place for such information. Operations specifications are not designed to be aircraft specific. As illustrated by the optional form and indicated in the NPRM, discrete information for each airplane must be carried. Airplanes may not be grouped on a form, such as a list of serial numbers for all of the aircraft of one model.

Note that we do not and will not refer to this information carried in any form as a "noise certificate" since it is not issued by the FAA and does not have the legal standing of a certificate issued by the FAA. As discussed previously, the FAA has no authority to issue such a certificate. Calling such items "noise certificates" could be confusing since there are countries that issue noise certificates.

FedEx Express suggested several changes to the information as shown on the optional form, including changing the name to "Noise Certification Document," removing certain information identifying the operator, deleting the references to the source of the noise data (such as the dated airplane flight manual with the revision number), and deleting the information at the end of the form indicating that the data were included in an FAA-approved document and that responsibility for its correct transfer is that of the operator. None of these changes is acceptable. The suggested change to reference part 36 compliance in lieu of a reference to an approved manual is unacceptable since a statement of part 36 compliance, by itself, does not provide any information specific to the aircraft. While FedEx Express states that it could be burdensome to have to change the reference when an AFM is revised, the AFM remains the document that contains the FAA approval for the aircraft noise data, and is thus the source of the data regardless of the format in which an operator chooses to carry it. Further, allowing the operator the choice of format is a reason to clearly indicate that the data were formatted by the operator, not the FAA, and that the only FAA-approved source is the airplane flight manual. That

information is considered essential to Annex 16 compliance.

One operator, Florida Air Transport, indicated that it operates several older airplanes between the United States and places in the Caribbean. None of its airplanes have ever been noise certificated since all pre-date the requirements for such testing and certification. Florida Air Transport asked if ICAO has an exemption for such aircraft.

Annex 16 does not account for the existence of older airplanes that were never subject to noise certification requirements. The concept is well understood in other ICAO member States, however, and certain "grandfathering" clauses have been adopted, some informally.

The FAA will be publishing guidance in the form of an AC on what airplanes it has determined pre-date the noise certification requirements of part 36. In order to comply with this regulation, we suggest that some form be carried containing as much information as is available regarding the aircraft, but we will provide a recommended statement for inclusion that replaces certain noise levels that are not entered on the form. The FAA anticipates that the AC will be available at the time the final rule is published.

The Regional Airline Association requested that the proposed rule be withdrawn since the FAA did not indicate in the NPRM how we concluded that a regulation was necessary. The RAA indicated that the "only rationale" for the proposed regulation is that "it might 'help' U.S. air carriers who might possibly be cited by inspectors in other countries." The RAA said that since ICAO standards "are directed at "States of Registry" not the individual airlines," it is within the prerogative of a member State not to enforce, and suggests the FAA request a waiver, which the RAA characterizes as "routine."

The RAA is mistaken in its characterization of Annex 16 and the actions required by ICAO member States. While it is possible to file a difference with ICAO standards, it is not a routine occurrence and carries more than moderate risk. It is not simply a matter of a member State choosing not to enforce one of the ICAO regulations. Aircraft operators that do not comply with ICAO standards may be denied entry to other ICAO countries. Filing a difference merely serves notice that the operators from a member State are not in compliance, it is not a free pass to ignore particular ICAO regulations.

Before the carriage of noise documentation was a requirement in Annex 16, it was a note, which was advisory in nature and suggested that noise certification data be carried on an aircraft that left its member State. In 2005, however, ICAO adopted it as a requirement in Annex 16 and the advisory nature of compliance disappeared. As stated in the NPRM, when a review of our regulations revealed that there was no requirement in U.S. regulations to carry noise data, we began the process of this rulemaking to comply with the Annex requirement.

The FAA is not requiring any particular format for carriage of the information, but cautions operators that all of the information required by the Annex must be carried to comply with both Annex 16 and the new § 91.703(a)(5). Annex 16 contains Attachment G, which is the ICAO's suggested format for the document. The FAA developed the optional form included in this document from Attachment G, modifying it to indicate that the form is the responsibility of the operator and not an FAA-approved document. For an operator that does not have the resources to research and develop its own form, we strongly suggest that the optional FAA form be used to eliminate inconsistencies in the data carried. The FAA has received approval from the Office of Management and Budget (OMB #2120–0737) to maintain this as an official form.

One commenter recommended that the FAA also issue an Advisory Circular (AC) or other guidance regarding means of compliance for this proposal.

The FAA will be issuing guidance material at the time this final rule is published. We anticipate that the AC will contain the optional form, the instructions for completing the form that appear in this document, and guidance for aircraft that are not required to be noise certificated because of their age.

Summary of Changes to the Final Rule

No substantive changes are being made from the rule proposed in the NPRM. This final rule adds a new paragraph (a)(5) to § 91.703 that requires aircraft subject to ICAO Annex 16 to carry noise certification data on board when those aircraft leave the United States.

Format of the data is at the operator's discretion. Operators developing their own formats are advised to ensure that all of the information required by ICAO Annex 16 Sections 1.4 and 1.5 is included. Data carried on board must be specific to each aircraft. Lists of aircraft noise levels that apply to more than one serial number aircraft are not acceptable for compliance. The FAA encourages operators to use the optional form included in this publication as a means of ensuring that all of the required data are included. The data, in whatever chosen format, must be available to the flight crew. To the extent that operators have the approval to carry documents electronically, this information may be included. The FAA will not be signing or otherwise approving the forms carried by the operator. The FAA does not issue noise certificates and information carried to comply with this regulation may not be referred to as an official or approved noise certificate. Accurate data transfer from an FAA-approved data source is the responsibility of the operator.

BILLING CODE 4910–13–P

1. **United States of America**				
2. **Aircraft Noise Certification Information** **Name of Operator** (Address, Telephone, and Fax Number)				
3.Document Number: (Optional)	**4. Nationality and Registration Marks:**	**5. Manufacturer; Manufacturer's Designation Of Aircraft (Model/Series):**		**6. Aircraft Serial Number:**
7. Engine:		**8. Propeller: (If applicable)**		
9. Maximum Takeoff Weight/ Mass: _____pounds (_____kg)	**10. Maximum Landing Weight/ Mass:** _____pounds (_____kg)		**11. Noise Standard: (If applicable)** Stage ____	
12. Additional modifications incorporated for the purpose of compliance with the applicable noise certification standards:				
13. Lateral/Full-Power Level (if applicable)	**14. Approach Noise Level (if applicable)**	**15. Flyover Noise Level (if applicable)**	**16. Overflight Noise Level (if applicable)**	**17. Takeoff Noise Level (if applicable)**
18. Subject Aircraft Noise Levels: The aircraft listed on this form meets the requirements of 14 CFR part 36. The noise information on this document has been copied from FAA-approved AFM/RFM/AOM/FCOM, number XXX-XXX-XXX, Revision X, dated MM-DD-YYYY. **19. Date** _____ **20. Signature** _____ (Official of Operator)				

This document supports compliance with ICAO Annex 16, Volume 1 for noise certification documentation carried on board U.S. aircraft. Information on this form has been transferred from an FAA-approved Aircraft Flight Manual by the named operator; that operator is solely responsible for the content.

BILLING CODE 4910–13–C

The following describes the data to be entered on the form:

1. United States of America (ICAO-required name of member State).

2. Title (Aircraft Noise Certification Information), plus the name of the operator and contact information.

3. Document number (optional for operator's use).

4. The nationality or common mark and registration marks (in the United States, N-number).

5. The aircraft manufacturer and manufacturer's designation of the aircraft (model and series, as appropriate).

6. The aircraft serial number.

7. The type and model of the subject aircraft's engine(s) (for identification and verification of the aircraft configuration).

8. For propeller-driven airplanes, the propeller type and model.

9. The maximum takeoff mass and unit. The primary U.S. unit differs from the international unit: the appropriate conversion factor can be found in ICAO Annex 5. To avoid confusion, a U.S. operator may choose to record weight/mass in both English and metric units. An example of a conversion change from pounds to kilograms is shown below:

Aircraft weight (pounds) conversion to aircraft mass (kilograms)[2]:

To convert aircraft weight from	to	Multiply by
pound (lb)	kilogram (kg)	4.53592 E–01.

Example: For a Boeing 747–400F that weighs 875,000 lb, 875,000 (lb) × 4.53592 E–01 (kg/lb) = 396,893 (kg)

10. The maximum landing mass and unit. To avoid confusion, a U.S. operator may choose to record weight/mass in both English and metric units. See conversion example above.

11. The Part 36 noise stage of the certificated aircraft. The terminology of aircraft certification classification in the United States is "Stage" rather than "Chapter" as used in Annex 16. The U.S. term is recognized by ICAO and is not considered a difference from Annex 16. Note that the term "Stage" is not applicable to airplanes certificated under 14 CFR part 36, Subpart F.

12. Any modifications to the aircraft incorporated for compliance with applicable noise certification standards. This item should include any modifications to the basic aircraft described in items 7 and 8.

13. The lateral/full-power noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36 certificated noise levels, expressed as Effective Perceived Noise Level (EPNdB). Note: For 14 CFR part 36, appendix B, certifications that predate Amendment 36–24 use the term "sideline" instead of "lateral."

14. The approach noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36, appendices B or H certificated noise levels, expressed as EPNdB.

15. The flyover noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36 certificated noise levels, expressed as EPNdB. For rotorcraft, certificated under appendices H or J, noise levels are expressed as either EPNdB or A-weighted Sound Exposure Level (dBA SEL), respectively. Note: For 14 CFR part 36, appendix B certifications that predate Amendment 36–24 use the term "takeoff" instead of "flyover."

16. The overflight noise level, as certificated. Operators of U.S.-registered aircraft must include the 14 CFR part 36 certificated noise levels. For small airplanes, certificated under appendix F, noise levels are expressed as maximum A-weighted sound level (dBA). For rotorcraft, certificated under appendices H or J, noise levels are expressed as either EPNdB or A-weighted SEL (dBA SEL), respectively.

Note: The terminology describing this noise level in 14 CFR part 36 is "flyover" rather than "overflight" as used in Annex 16.

17. The takeoff noise level, as certificated. Operators of U.S.-registered aircraft must use the 14 CFR part 36, appendices G and H certificated noise levels as described in item 16.

18. A statement that the individual aircraft complies with the applicable noise requirements of the U.S. regulations applicable to its type and size.

19. The date on which the noise certification document was created by the operator.

20. The signature of the official of the operator attesting to the accuracy of the information in the FAA Form.

Listing multiple aircraft with similar characteristics on the same document will not be allowed. Only the data for the single aircraft listed in the serial number and registration sections is to be listed on this form. Failure to carry the correct information, regardless of form, is considered a violation of the regulation.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0737.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has determined this regulation is a means of compliance with Annex 16 regarding noise documentation carried on board aircraft that leave the United States.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that the proposal or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule will require operators of U.S. registered civil aircraft flying outside the United States subject to ICAO Annex 16, Volume 1, Amendment 8, to carry aircraft noise certification data on board the aircraft. Operators may comply with the rule by transferring the data from the Airplane Flight Manual or Airline Operations Manual to a suggested form included in this rulemaking. Operators may also choose to carry the required information in a different format. The rule will require that this information be easily accessible to the flight crew and

[2] In 1959, the directors of the national standards laboratories of the United States, Canada, the United Kingdom, Australia, New Zealand, and the Union of South Africa agreed on common definitions of the customary length and mass units. They define the pound avoirdupois as 4.53592 E–01 kg. The engineering practice of using lbm for pound mass is obsolete.

presentable upon request to the appropriate officials.

The FAA was unable to determine the exact number of U.S. registered aircraft that will be subject to this final rule. Also, the FAA received no comments about its methodology used to estimate the cost of this rule. Therefore, the FAA will continue to use (as an overestimate) the total number of passenger jet and cargo jet aircraft registered to U.S. mainline carriers in its cost computations. Based on the FAA Aerospace Forecast, there are a total of 5,066 aircraft currently registered to U.S. mainline air carriers.[3]

For the purposes of this analysis, we assume that operators would choose to comply with the final rule by using the provided recommended form. This form would be completed one time for each aircraft. We estimate that completion of the form would require 15 minutes of a technical writer's time and 10 minutes of a chief pilot's or chief engineer's time. The average wage rate for a technical writer is $29.95 per hour[4] after accounting for fringe benefits. The average wage rate for a chief pilot or chief engineer is estimated at $79.48 per hour[5] after accounting for fringe benefits.

The cost of the final rule per affected airplane was derived by multiplying the technical writer's wage rate of $29.95 per hour by 0.25 hours required to complete the form, and adding to that the chief pilot's wage rate of $79.48 per hour multiplied by 0.17 hours required to review and sign the form. Thus, compliance with this regulation will result in a per-airplane cost of $21. As a result, the initial cost of the final rule will be $21 per aircraft times 5,066 aircraft, for a total of $106,386. Operators may subsequently decide to purchase or modify aircraft affected by the final rule. If they do so, operators will incur an extra cost of $21 per additional airplane to bring it into compliance with ICAO Annex 16, Volume 1, Amendment 8.

This final rule will ensure that U.S. aircraft that fly outside the United States are in compliance with ICAO Annex 16, Amendment 8. Operators will benefit from the rule by having the proper documentation readily available for foreign authorities, avoiding delays and detainment when noise certification status is questioned. The FAA believes that the negligible cost of compliance with this rule is outweighed by the benefit of compliance with the international standard.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will ensure that U.S. operators have consistent noise certification information on board when they fly outside the United States. This rule is needed to ensure compliance with the ICAO Annex 16 that requires certain noise information be carried on board. Under the final rule, each small entity will incur a one-time cost of $21 per aircraft currently in its fleet. Operators may subsequently decide to purchase or modify aircraft affected by the final rule; if they do so, they will incur an extra cost of $21 per airplane to comply. The FAA does not consider this a significant cost. The FAA received no comments from the public regarding this finding. Therefore, as the Administrator of the FAA, I certify that this final rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreement Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will affect only those U.S. operators that conduct international operations. The expected outcome of this final rule will be a minimal impact on affected operators with the net benefits of ICAO compliance.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this NPRM under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the

[3] Tables 20 and 21, U.S. Mainline Air Carriers, Cargo Jet Aircraft, FAA Aerospace Forecast, FY 2008–2025.

[4] FAA, APO–310, N & O Rule Regulatory Evaluation.

[5] Hourly wage derived by taking median salary of $133,916 for a chief pilot, dividing by 2,080 hours per year, and multiplying by the fringe benefit factor of 1.2345. Salary source: *http://swz.salary.com/salarywizard/layouthtmls/swzl_compresult_national_TR20000019.html,* last accessed June 30, 2008.

absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

You may 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.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR part 91

Aircraft, Noise control, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506, 46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat 1180).

■ 2. Amend § 91.703 by adding paragraph (a)(5) to read as follows:

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) * * *

(5) For aircraft subject to ICAO Annex 16, carry on board the aircraft documents that summarize the noise operating characteristics and certifications of the aircraft that demonstrate compliance with this part and part 36 of this chapter.

* * * * *

Issued in Washington, DC, on February 18, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–4316 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA provides a dose range for use of an injectable solution of tilmicosin phosphate for treatment of respiratory disease in cattle and additional pathogens for which this therapy is effective.

DATES: This rule is effective March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 140–929 for MICOTIL 300 (tilmicosin injection, USP) Injection, available by veterinary prescription for use in the treatment and control of respiratory disease in cattle and the treatment of respiratory disease in sheep. The supplemental NADA establishes a dose range and adds pathogens for which this therapy is effective in the management of bovine respiratory disease. As a consequence of revising the dosage, the preslaughter withdrawal period has been recalculated. The supplemental NADA is approved as of December 30, 2009, and the regulations in 21 CFR 522.2471 are amended to reflect the approval.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

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

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because

it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.2471, revise paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) to read as follows:

§ 522.2471 Tilmicosin.

* * * * *

(e) * * *

(1) * * *

(i) *Amount*. 10 to 20 milligrams per kilograms (mg/kg) of body weight as a single subcutaneous injection.

(ii) *Indications for use*. For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni*. For the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*.

(iii) *Limitations*. Do not use in female dairy cattle 20 months of age or older. Use of this antibiotic in this class of cattle may cause milk residues. Do not slaughter within 42 days of last treatment.

* * * * *

Dated: February 16, 2010.

Steven D. Vaughn,

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

[FR Doc. 2010–4206 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by ADM Alliance Nutrition, Inc. The supplemental NADA provides for use of a higher concentration chlortetracycline Type A medicated article for the manufacture of medicated feeds for livestock and poultry.

DATES: This rule is effective March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115, filed a supplement to NADA 48–480 that provides for the use of CHLORATET 50 (chlortetracycline), a Type A medicated article containing 50 grams of chlortetracycline per pound, for the manufacture of medicated feeds for livestock and poultry. The supplement provides for use of Type A medicated articles containing 90 or 100 grams of chlortetracycline per pound. The supplemental NADA is approved as of January 7, 2010, and the regulations are amended in 21 CFR 558.128 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

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

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

List of Subject in 21 CFR Part 558

Animal drugs, animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 2. In § 558.128, revise paragraph (b)(2) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(b) * * *

(2) No. 012286: 50, 90, or 100 grams per pound of Type A medicated article.

* * * * *

Dated: February 16, 2010.

Steven D. Vaughn,

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

[FR Doc. 2010–4205 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB21

Multiemployer Pension Plan Information Made Available on Request

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule implementing section 101(k) of the Employee Retirement Income Security Act of 1974, as amended by the Pension Protection Act of 2006. Section 101(k) requires the administrator of a multiemployer plan to provide copies of certain actuarial and financial documents about the plan to participants, beneficiaries, employee representatives and contributing employers upon request. The final rule affects plan administrators, participants and beneficiaries and contributing employers of multiemployer plans.

DATES: This final rule is effective on April 1, 2010.

FOR FURTHER INFORMATION CONTACT: June Solonsky or Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 101(k) of the Employee Retirement Income Security Act

(ERISA), 29 U.S.C. 1021(k), added by section 502(a)(1) of the Pension Protection Act of 2006 (PPA),[1] provides that the administrator of a multiemployer pension plan, upon written request, shall furnish copies of certain actuarial and financial documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that are required to be furnished are: (A) A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess a civil penalty of not more than $1,000 a day for each violation of section 101(k).[2] Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

On September 14, 2007, the Department published in the **Federal Register** a proposed rule under section 101(k) of ERISA and invited interested parties to comment.[3] The Department received four written comments on the proposal. Copies of these comments are posted on the Department's Web site at *http://www.dol.gov/ebsa.* After careful consideration of the issues raised by the written comments, the Department is adopting the final rule contained herein. While the Department has made some clarifying changes to both the structure and provisions of the rule, the final rule, described below, is substantially the same as the proposal.

B. Overview of Final Rule and Comments

1. General § 2520.101–6(a)

Paragraph (a) of the final rule, like the proposal, sets forth the general requirement under section 101(k) that the administrator of a multiemployer pension plan furnish copies of certain actuarial and financial documents. These documents must be furnished in accordance with paragraph (b) of the regulation. The specific documents required to be furnished are described in paragraph (c) of the final rule. A new paragraph (d) has been added to the final rule for purposes of consolidating and clarifying exceptions to and limitations on an administrator's obligation to furnish requested documents. Paragraph (e) describes the persons entitled to request documents for purposes of section 101(k).

2. Obligation To Furnish § 2520.101–6(b)

Paragraph (b) of the final rule is substantially the same as the proposal. Paragraph (b)(1) requires that, except as provided in paragraph (d), requested documents must be furnished not later than 30 days after receipt of the written request.

Paragraph (b)(2) of the final rule focuses on delivery and requires requested documents to be furnished in accordance with the delivery requirements of 29 CFR 2520.104b–1, including paragraph (c) relating to the use of electronic delivery.

Paragraph (b)(3) of the proposal addressed the limitation on a requester's ability to request the same document more than once in any 12-month period. As part of the consolidation mentioned above, this limitation now appears in paragraph (d)(1) of the final rule and is discussed in connection with that paragraph.

Paragraph (b)(3) of the final rule addresses the ability of a plan administrator to impose reasonable charges to cover the cost of furnishing the requested documents. The PPA specifically authorized the imposition of reasonable charges for the furnishing of documents pursuant to section 101(k). For this purpose, the Department proposed (see paragraph (b)(4) of the proposal) that a reasonable charge may not exceed the lesser of the actual cost to the plan for the least expensive means of acceptable reproduction of the document, or 25 cents per page, plus the cost of mailing or otherwise delivering the requested document. This standard adopts the existing reasonable charge standard under 29 CFR 2520.104b–30 but also permits the plan administrator to charge the requester the actual cost to the plan of mailing or delivering the requested document. One commenter suggested that the 25 cents per page portion of the reasonable charge standard should be lowered due to advances in reproduction technology. The commenter suggested a maximum of 10 cents per page for black and white reproductions. Although the Department recognizes that advances in document copying may reduce costs in many cases, the Department has not adopted this suggestion because it lacks sufficient information at this time to prescribe an alternative maximum charge. The Department notes, however, that under the rule as adopted plans may never charge more than the actual cost of the least expensive method of reproduction used by the plan. Therefore, as plans adopt more efficient, less costly reproduction methods, the amounts charged to participants, beneficiaries and others will be reduced accordingly.

3. Documents To Be Furnished § 2520.101–6(c)

Paragraph (c) of the final rule, like the proposal, describes the documents that must be furnished pursuant to section 101(k).

Paragraph (c)(1)(i) of the proposal provided for the disclosure of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days prior to the date of the written request. Two commenters requested clarification of this provision. One commenter requested that the final regulation limit disclosure under paragraph (c)(1)(i) to reports that actuaries produce at regularly scheduled, recurring intervals, such as reports in connection with annual valuations. The other commenter, however, was concerned that such a limitation could exclude relevant sensitivity testing not provided routinely or in regular cycles. In response to these comments, the Department has included language in the final regulation, at paragraph (c)(1), that limits and clarifies the disclosure obligations with respect to actuarial reports.

As modified, paragraph (c)(1) provides that the term "periodic actuarial report" means any actuarial reports prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals. A plan administrator, therefore, would be required pursuant to this provision to disclose copies of any actuarial report prepared in connection with the annual valuation or pursuant to the requirements of section 305 of ERISA. The final regulation also makes clear that the term "periodic actuarial report" includes studies, tests (including sensitivity tests), documents, analyses or other information (whether or not

[1] Pub. L. 109–280, 120 Stat. 780.

[2] On January 2, 2009, the Department published in the Federal Register a final rule, effective March 3, 2009, that establishes procedures relating to the assessment of civil penalties by the Department under section 502(c)(4) of ERISA. See 74 FR 17.

[3] 72 FR 52527.

called a "report") received by the plan from an actuary of the plan that depict alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not received by the plan at regularly scheduled, recurring intervals. Thus, under this provision, a plan administrator would be required to disclose any sensitivity testing that the plan may request occasionally, such as in response to a certification of critical or endangered status.

The limitation that only those periodic actuarial reports in the plan's possession for at least 30 days are required to be disclosed is included in paragraph (d) of the final rule addressing limitations and exceptions.

Paragraph (c)(1)(ii) of the proposal provided that a document subject to disclosure includes a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days before the plan receives the written request. The parenthetical language "without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act" clarifies for plan administrators that financial reports subject to disclosure include those prepared by investment advisors regardless of such advisors' ERISA fiduciary status.

The Department requested comment on whether, in addition to the above clarification, a financial report made available for disclosure under section 101(k) should be further defined. The Department received one comment in response. The commenter expressed concern that the definition of financial report in the proposal could result in overly burdensome requests because the proposed language could be read to require disclosure of every document prepared for a board of trustees meeting by any outside professional or internal fiduciary, so long as the document has any financial aspect to it. Therefore, the commenter recommended limiting the scope of disclosure only to investment-related reports (*e.g.,* investment manager reports, investment advisor reports, and investment consultant reports) and fund auditor reports received by the plan annually, semi-annually or quarterly. While the Department believes that investment-related reports are a primary object of the new disclosure requirement, the statutory language does not limit the type of quarterly, semi-annual or annual financial reports subject to this new disclosure to only those that are investment-related. The Department, therefore, is adopting this provision without change. See paragraph (c)(2) of § 2520.101–6.

The limitation that only those financial reports in the plan's possession for at least 30 days are required to be disclosed is included in paragraph (d) of the final rule addressing limitations and exceptions.

Paragraph (c)(1)(iii) of the proposal required the disclosure of applications filed with the Secretary of the Treasury requesting an extension under section 304 of this Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application. There were no comments on this provision. Accordingly, the provision is being adopted without change. See paragraph (c)(3) of § 2520.101–6.

Paragraph (c)(2) of the proposal described the extent to which underlying data, individually identifiable information and proprietary information is not required to be disclosed for purposes of section 101(k). These provisions are set forth in paragraph (d), discussed below, describing limitations and exceptions.

4. Limitations and Exceptions § 2520.101–6(d)

Paragraph (d) of the final regulation consolidates the limitations and exceptions applicable to the disclosure requirements under section 101(k). In general, paragraph (d) describes the reports, applications and information that are not subject to disclosure under section 101(k). For purposes of paragraph (d) of the final rule, the word "application" should be read as including any determination by the Secretary of the Treasury on such application.

(a) 12-Month Limit

Paragraph (d)(1) addresses the 12-month limit on requests. As proposed, the limitation made clear that a plan administrator is not required to furnish to any requester more than one copy of a document during any 12-month period. One commenter argued that tracking the 12-month period on a request-by-request basis may be unnecessarily burdensome and suggested, instead, that plans have the flexibility to choose static or fixed periods, such as plan or calendar years. The Department has not adopted this suggestion. The Department, however, has clarified the operative language of the regulation as it relates to the timing of the 12-month period. Pursuant to paragraph (d)(1) of the final rule, a plan administrator is not required to furnish any report or application that has been furnished to the requester within the 12-month period immediately preceding the date on which the request was received by the plan. As noted in the preamble to the proposal, there is no requirement that a plan impose such a limitation on requests. Accordingly, plans are free to limit the costs and administrative burdens attendant to tracking document request periods simply by not imposing the limitation on requesters.

(b) Aged Documents

Paragraph (d)(2) of the final regulation deals with aged documents. The Department received two comments suggesting that the regulation limit a plan administrator's obligation to furnish copies of outdated reports. One commenter expressed concern that the proposal did not limit in any way requests for documents dating back indefinitely and that such requests could create severe administrative burdens on plan administrators who might, for example, be required to search for documents from decades past. A second commenter suggested that financial reports become less useful to requesters as newer versions of these reports become available and, therefore, a plan administrator's obligation to furnish aged documents need not extend indefinitely into the past. Both commenters suggested a maximum period approximating the period applicable to records required to be kept under the record retention requirements in section 107 of ERISA. The Department agrees that the obligations of an administrator should not be unlimited with respect to aged documents. The Department also agrees that limiting an administrator's obligation in a manner consistent with the six-year record retention requirement of section 107 would preserve the right of requesters to request and obtain relevant documents without imposing undue burdens on plan administrators. The Department, therefore, has modified the regulation to exclude from the documents required to be furnished under section 101(k) those reports and applications that have been in the plan's possession for 6 years or more as of the date on which the request was received by the plan. See paragraph (d)(2) of § 2520.101–6.

(c) 30-Day Exception

Paragraph (d)(3) of the final rule addresses the disclosure exception applicable to those reports that have not been in the possession of the plan for at least 30 days. One commenter on the proposed regulation requested

clarification of a plan administrator's obligation to furnish a requested report within 30 days from the request when the plan has not had possession of the report for 30 days at the time of the request. Paragraph (b)(1) of the proposal provided that a report must be furnished not later than 30 days after the date the written request is received by the plan. However, paragraph (c)(1) of the proposal provided that a report is not required to be disclosed until it has been in the plan's possession for at least 30 days prior to the date of a written request. The Department addresses this issue in paragraph (d)(3) of the final rule by providing an exception to the otherwise applicable disclosure rule for any reports that, as of the date a request is received by the plan, has not been in the plan's possession for at least 30 days. However, because requesting parties may not know about this limitation on their right to receive reports, the final rule also provides that, in connection with the exercise of this limitation, the plan administrator must furnish a timely notice—not later than 30 days after the date on which the request was received by the plan—informing the requester of the existence of the report and the earliest date on which the report can be furnished by the plan. With such information, requesting parties are in a position to determine whether and when to further pursue their request, while at the same time not requiring plans to prematurely disclose the requested report(s).

(d) Underlying Information and Data Exception

Paragraph (d)(4) addresses the disclosure exception for information and data underlying reports and applications required to be disclosed. One commenter questioned whether this limitation, as set forth in paragraph (c)(2)(i) of the proposal, is consistent with the requirements of section 101(k). The commenter also requested clarification of the scope of the limitation. It is the view of the Department that in enacting section 101(k), Congress was sufficiently specific in its reference to documents subject to the disclosure requirements to conclude that it did not intend to include within the scope of required disclosure all information and data used to develop or support the identified documents. The Department, therefore, has retained the exception in the final rule as proposed.[4] By way of an example in applying the final rule, while a plan's annual valuation report typically would be required to be disclosed under paragraph (c)(1) of the final rule, the plan's asset statement or documents consisting of participant census data used to create that report would be subject to the limitation in paragraph (d)(4) of the final rule.

(e) Individually Identifiable and Proprietary Information Exception

Paragraph (d)(5) of the final rule addresses the disclosure exception relating to individually identifiable information and proprietary information.

The proposal provided, in paragraph (c)(2)(ii)(A), that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer. One commenter was concerned that this provision might be construed as prohibiting identification of the investment manager or advisor who prepared a financial report or whose performance is under review in a report. Following the publication of the proposed regulation, Congress amended section 101(k) in the Worker, Retiree and Employer Recovery Act of 2008[5] to provide that the exception for individually identifiable information does not apply to an investment manager or adviser or to any other person (other than an employee of the plan) preparing a financial report described in section 101(k)(1)(B). The Department has conformed the final rule to this amendment. See paragraph (d)(5)(i) of § 2520.101–6.

Paragraph (c)(2)(ii)(B) of the proposed regulation, consistent with ERISA section 101(k)(2)(C)(ii), provided that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. Neither the statute nor the proposal defined the term "proprietary information," but the proposal specifically requested comment on whether clarification is needed with respect to determinations regarding what information should be considered proprietary in this context and, if so, what standards should govern such determinations.

One commenter expressed concern that the proposal granted too much discretion to plan administrators in determining what information the plan must disclose, particularly with respect to proprietary information regarding the plan (as opposed to proprietary information of contributing employers or entities providing services to the plan). The commenter recommended that the final regulation specifically define what information may be considered proprietary information and, with respect to proprietary information regarding the plan, no information should be considered proprietary unless its dissemination would be significantly adverse to the operation of the plan. Another commenter was generally supportive of the approach taken in the proposal, but suggested that the final regulation should have a special "safe harbor" rule on proprietary information regarding entities providing services to the plan. Such a rule, according to the commenter, would preclude plan administrators from disclosing any information that a service provider considers to be proprietary in nature, taking into account state laws and other standards and precedents applicable to the service provider.

After careful consideration of the issues raised by the commenters, the Department has modified paragraph (d)(5) of the final rule to clarify the proprietary information exception. Like the proposal, the plan administrator is responsible for deciding what information is proprietary in nature. In this regard, a plan administrator may not redact information unless he or she reasonably determines that it is proprietary. The Department believes that use of the proprietary information exception from the disclosure requirements of section 101(k) will be rare.

In an effort to clarify the exception, the final rule defines the term "proprietary information" for purposes of section 101(k) and the regulation. Paragraph (d)(5)(ii) of the final rule provides that "proprietary information" means trade secrets and other non-public information (*e.g.,* processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the plan, may cause, or increase a reasonable risk of, financial harm to the plan, a contributing employer, or entity providing services to the plan. In addition, the final regulation provides,

[4] The Department further notes that section 101(k) of ERISA and section 502(a)(3) of the PPA expressly grant the Department the authority to prescribe regulations under section 101(k). In addition, the Department has broad rulemaking authority under section 505 of ERISA to prescribe regulations necessary or appropriate to carry out the provisions of title I of ERISA. It is the view of the Department that the provisions of the final rule are consistent with the foregoing authority. The Department also notes that nothing in the limitation under paragraph (d)(4) of the final regulation shall limit any other right that a person may have to review or obtain such underlying information.

[5] Public Law 110–458, section 105(b)(1), 122 Stat. 5092, 5104.

at paragraph (d)(5)(iii), that a plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary. This approach encourages a narrow and reasoned use of the proprietary information exception, which will benefit requesting persons. At the same time, it will give plan administrators more specific authority on which to rely when they need to withhold information. The final regulation clarifies that information such as customer lists, risk evaluation tools, investment strategies, and trading strategies will often be proprietary information of the entity providing the service to the plan. On the other hand, it would not be consistent with the requirements of the regulation and section 101(k) for a plan administrator to characterize information showing poor performance, or violations of law, as "propriety information" merely to avoid disclosing it under section 101(k). Nor typically would it be consistent with section 101(k) for a plan administrator to determine that information is proprietary when the administrator knows that the information has been made available to the general public.

5. Persons Entitled To Request Documents § 2520.101–6(e)

Like paragraph (d) of the proposal, paragraph (e) of the final rule defines a person entitled to request and receive documents under section 101(k) as any participant within the meaning of section 3(7) of the Act, any beneficiary receiving benefits under the plan, any labor organization representing participants under the plan, or any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to ERISA section 4203. The Department received one comment asking whether a plan administrator would be obligated to furnish a copy of a report requested by a third party acting on behalf of a participant or beneficiary who is entitled to request documents under section 101(k). The Department has long held the view that a third party, for example an attorney or family member, is entitled to request and receive documents on behalf of a participant or beneficiary as long as the participant or beneficiary has properly authorized the release of such information to the third party and the documents are otherwise required to be disclosed to the participant or beneficiary under title I of ERISA.[6] Nothing in section 101(k) of ERISA or the final regulation is contrary to this position. Paragraph (e) of the final rule is being adopted without change from the proposal. See paragraph (e) of § 2520.101–6.

6. Miscellaneous

One commenter noted that the proposal would not have required plans to inform participants of their new rights under section 101(k) to request and receive copies of actuarial and financial documents from their plans. It is the view of the Department that a plan's summary plan description should inform participants and beneficiaries about their right to request documents required to be disclosed under section 101(k). The summary plan description is the primary vehicle under ERISA for informing participants about their rights and benefits. While amending the regulations governing the summary plan description is beyond the scope of this rulemaking, the Department will be considering changes to the statement of ERISA rights required by paragraph (t) of 29 CFR 2520.102–3, and the model statement set forth at paragraph (t)(2) of that section, to encompass the disclosure of the right to documents under section 101(k) of the Act. In this regard, the Department invites suggestions for model language and identification of any other changes necessary to update the statement of ERISA rights described in paragraph (t). Such suggestions may be submitted to *e-ori@dol.gov,* subject: Statement of ERISA rights.

7. Charges for Documents

Along with the proposed regulation under § 2520.101–6, the Department also proposed amendments to 29 CFR 2520.104b–30, which provides guidelines for assessing a reasonable charge for furnishing plan documents pursuant to ERISA section 104(b)(4) (*e.g.,* latest updated summary plan description, latest annual report, any terminal report, *etc.*). Language in § 2520.104b–30 could be construed as contrary to specific language in section 101(k) of ERISA, § 2520.101–6 and other PPA provisions amending title I of ERISA that expressly permit plan administrators to impose reasonable charges on requesters for the cost of furnishing the requested information, including handling and postage charges. Accordingly, minor conforming amendments were proposed to paragraph (a) of § 2520.104b–30. Because the Department received no comment on these amendments, they were adopted without change in the final rule.

C. Regulatory Impact Analysis

Summary

This final rule contains guidance necessary to implement section 101(k) of the Act, the requirements of which are discussed above.

Section 101(k) was added to ERISA because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer pension plan system. Providing participants and beneficiaries, employee representatives, and contributing employers with greater access to actuarial and financial information regarding their plans will increase the transparency of multiemployer pension plans and afford all parties interested in the financial viability of such plans greater opportunity to monitor their funding and financial status and to take appropriate action when necessary.

By clarifying certain terms used in section 101(k) of the Act, this regulation will also permit multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty. The increase in transparency of plan operations may also contribute to a greater sense of accountability to plan participants and beneficiaries on the part of plan officials. These benefits have not been quantified.

The cost of the multiemployer plan disclosure requirement under section 101(k) of the Act and the final rule is expected to total approximately $2.4 million in the year of implementation,[7] $2.1 million in the second year, and $1.7 million in the third year. The ten-year total discounted cost of the statute and rule is $15.7 million.[8] These costs arise from logging in disclosure requests, copying and mailing the reports, and redacting individually identifiable and proprietary information from the reports. The total hour burden is estimated to be 47,000 hours in the first year, 42,000 in the second year and 34,000 in the third year. Both the dollar

[6] See, *e.g.,* Advisory Opinion 82–21A (Apr. 21, 1982) (referencing AO 79–82A).

[7] For purposes of this regulatory impact analysis, the Department has assumed that 2010 is the year of implementation, notwithstanding that section 101(k) of ERISA first became effective for plan years beginning after December 31, 2007. The Department uses pre-PPA requirements as the base-line for this analysis.

[8] This assumes a discount rate of 7 percent and is in 2009 Dollars. The ten-year period covers the years 2010–2019.

burden and the hour burden are projected to fall over the three-year period as interest in the aging inventory of existing documents subject to this regulation wanes. The dollar equivalent of the three-year hour burden is estimated to be $3.7 million.

The data and methodology used in developing these estimates are more fully described in the Paperwork Reduction Act section of this regulatory impact analysis.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Although the Department believes that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order, the action has been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the rule justify its costs.

In assessing the costs and benefits of the rule and associated provisions of the Act, the Department endeavored to consider all of the major activities that will be carried out pursuant to them, *e.g.,* copying and mailing the reports and redacting individually identifiable and proprietary information from the reports. Because the regulation does not require the creation of any new documents, the costs of the rule are limited to those arising from logging in requests and from copying, mailing and redacting disclosed reports.

The Department estimates that the total cost [9] per plan year over the first three-year period to comply with the regulation will average $870 for defined benefit plans and $580 for defined contribution plans. Given that total 2006 assets of multiemployer pension plans averaged about $290 million in defined benefit plans and $55 million in defined contribution plans, these annual costs average about $3 per million dollars of plan assets in defined benefit plans and $10 per million dollars of assets in defined contribution plans. The Department believes that the rule will provide participants, beneficiaries, employee representatives, and contributing employers with important information regarding the funding and financial status of multiemployer pension plans and allow them to take action where appropriate. Although the benefits of this increased transparency have not been quantified, the Department has concluded that these benefits of the rule justify its costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), the proposed regulation solicited comments on the information collections included in the regulation. The Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) contemporaneously with publication of the proposed regulation for OMB's review. Two public comments described earlier in this preamble raised issues relevant to the costs and administrative burdens attendant to the proposal. The Department took these public comments into account in revising the economic impact of the proposal and developing the revised paperwork burden analysis discussed below.

In connection with publication of this final rule, the Department submitted an ICR to OMB for its request of a new collection. OMB approved the ICR on February 21, 2010, under OMB Control Number 1210–0131, which expires on February 28, 2013. A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.* PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

[9] Total cost is the sum of the dollar burden and the dollar equivalent of the hour burden.

The final rule implements the disclosure requirements of new section 101(k) of the Act, as added by section 502(a)(1) of the PPA. As described earlier in the preamble, section 101(k)(1) of the Act requires multiemployer plan administrators, upon written request, to furnish copies of certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (1) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of ERISA (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this final regulation are found in § 2520.101–6(a), which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of certain actuarial and financial documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request. This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers for purposes of the PRA. Pursuant to § 2520.101–6(d)(5), the documents required to be disclosed shall not contain any information that the plan administrator reasonably determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report described in paragraph § 2520.101–6(c)(2); or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The plan administrator must inform the requester if any such information is withheld.

Annual Hour Burden

In order to estimate the potential costs of section 101(k) of the Act and this

final rule, the Department estimated the number of plans that would be affected. Based on data derived exclusively from the Form 5500 for the 2006 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,500 multiemployer defined benefit plans and 1,530 multiemployer defined contribution plans that would be subject to this disclosure requirement. Section 101(k) of the Act and the proposal generally did not limit the class of documents that can be requested in any way by date of creation or receipt. However, as explained in the preamble above, in response to comments received on the proposal, the final regulation limits a plan administrator's obligation with respect to aged documents. See § 2520.101–6(d)(2). Thus, for purposes of this regulatory impact analysis, the Department has assumed that plans would not respond to any requests for aged documents (*i.e.,* documents in existing inventory that were received prior to the 2004 plan year), but that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports ("actuarial reports"), quarterly, semiannual, or annual financial reports ("financial reports"), and amortization extension requests filed with the IRS ("extension requests").

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and redact reports eligible for disclosure. Redaction may be required to remove individually identifiable and proprietary information from certain reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 99,000 [10] requests to disclose existing financial reports (an average of 66 per plan), 75,000 requests for existing actuarial reports (an average of 50 per plan), and 1,500 requests for existing extension requests (an average of one per plan), and defined contribution plans will receive 64,000 requests for existing financial reports (an average of 42 per plan). Therefore, the Department estimates that multiemployer pension plans will receive a total of 240,000 requests for disclosures of existing inventory of reports at some point over the first five years starting on the effective date of the statute.

For purposes of this analysis, the Department assumes that 40 percent of the existing documents would be requested in the year section 101(k) first became effective, 30 percent in the second year, 15 percent in the third year, 10 percent in the fourth year, and 5 percent in the fifth year.[11] Although section 101(k) first became effective for plan years beginning after December 31, 2007, the final rule is not itself effective until 30 days after its publication in the **Federal Register** (2010). Therefore, the Department estimates that 70% of existing documents would be disclosed during the two years before the effective date of the regulation and these costs are accounted for in the RIA. The PRA burden analysis, however, only accounts for the hour and cost burden incurred during the year the final rule is effective and the following two years (2010–2012). Based on this allocation, the hour burdens are estimated to be 34,000 hours ($1.1 million equivalent cost) in 2010, 32,000 hours ($1.1 million equivalent cost) in 2011, and 29,000 hours ($875,000 equivalent cost) in 2012.

The Department estimates that the total hour burden associated with disclosing existing documents upon request over the three-year period (2010–2012) will be approximately 16,000 hours.[12] For purposes of this impact analysis only, this includes 15,000 clerical hours to log requests and to locate, copy, and mail paper disclosures [13] and 1,200 legal hours (1.1 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests) [14] to redact individually identifiable and proprietary information.[15] The equivalent costs of these hours are $540,000.[16]

With respect to newly created reports, the Department estimates that multiemployer defined benefit plans will receive 105,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created extension requests (an average of one per plan), and defined contribution plans will receive 92,000 requests for newly created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 231,000 requests annually for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 26,000 hours annually. This estimate includes 25,000 clerical hours to copy and mail paper disclosures and 1,300 legal hours to redact individually identifiable and proprietary information. The equivalent cost of these hours is estimated to be $785,000.

Annual Cost Burden

The main costs arising from this information collection derive from the direct costs of redacting individually identifiable and proprietary information from the reports. The Department assumes no additional costs for copying and mailing documents, because the final rule, like the proposal, allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document.[17]

The estimated total costs to redact individually identifiable and proprietary information from the existing inventory of financial reports over the three-year period 2010–2012

[10] All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

[11] This assumption is based on the expectation that interest in receiving existing documents will be high in the initial year of implementation and gradually decrease in subsequent years.

[12] 8,200 hours in 2010, 5,400 hours in 2011, and 2,700 hours in 2012.

[13] This is the product of the total documents disclosed times the percentage of documents disclosed on paper times 15 minutes (to locate, copy, and mail paper documents).

[14] The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction.

[15] The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. Documents are assumed to be disclosed on paper unless the requester has access to e-mail and requests a document that already exists in paper form.

[16] EBSA labor rate estimates are in 2009 Dollars and are based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index (June 2008, Bureau of Labor Statistics). Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average $26 per hour. Total labor cost for legal staff was estimated to average $116 per hour based on wage estimates for attorneys.

[17] One commenter expressed concern that the administrative cost of the proposed rule may have been overstated because Internet disclosure will be frequent and cost efficient. The Department notes that no distribution costs for the notices have been included in this PRA analysis because plans can charge for the cost of furnishing paper documents and the cost of electronic distribution is nominal.

are $132,000[18] and from the existing inventory of actuarial reports are $82,000.[19] The Department estimates that no costs will be incurred for redacting information from the existing inventory of extension requests. For multiemployer defined contribution plans, estimated redaction costs for existing financial reports are $134,000.[20] Therefore, the total redaction costs for the existing inventory of all reports are estimated to be $348,000.[21]

The estimated annual costs of contract work[22] to redact individually identifiable and proprietary information for newly-created financial reports would be $146,000 and $46,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created extension requests. For multiemployer defined contribution plans, the annual redaction costs for newly created financial reports are estimated to be $149,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be $341,000.

Type of Review: New collection.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Multiemployer Pension Plan Information Made Available on Request.

OMB Number: 1210–0131.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 3,037.

Frequency of Response: Occasionally.

Responses: 255,000.

Estimated Total Annual Hour Burden: 34,000 (first year); 31,000 (second year); 29,000 (third year).

Estimated Total Annual Cost Burden: $515,000 (first year); $457,000 (second year); $399,000 (third year).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. By this standard, data from the EBSA Private Pension Bulletin 2006 show that only 375 multiemployer pension plans or 12% of all multiemployer pension plans are small entities. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of the RFA, the Department hereby certifies that this rule is not likely to have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 2520 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k) and Pub. L. 109–280, § 502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

■ 2. Add and reserve § 2520.101–5 of subpart A, and add § 2520.101–6 to subpart A to read as follows:

§ 2520.101–5 [Reserved]

§ 2520.101–6 Multiemployer Pension Plan Information Made Available on Request.

(a) *In general.* For purposes of compliance with the requirements of section 101(k) of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001, *et seq.,* the administrator of a multiemployer pension plan shall, in

[18] $66,000 in 2010, $44,000 in 2011, and $22,000 in 2012.

[19] $41,000 in 2010, $27,000 in 2011, and $13,000 in 2012.

[20] $67,000 in 2010, $44,000 in 2011, and 22,000 in 2012.

[21] $174,000 in 2010, $116,000 in 2011, and $58,000 in 2012.

[22] The Department has assumed that 70% of redaction work will be contracted.

accordance with the requirements of this section, furnish copies of reports and applications described in paragraph (c) of this section to plan participants, beneficiaries, employee representatives and contributing employers, described in paragraph (e) of this section.

(b) *Obligation to furnish.* (1) Except as provided in paragraph (d) of this section, the administrator of a multiemployer pension plan shall, not later than 30 days after receipt of a written request for a report(s) or application(s) described in paragraph (c) of this section from a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, furnish the requested document or documents to the requester.

(2) The plan administrator shall furnish reports and applications pursuant to paragraph (b)(1) of this section in a manner consistent with the requirements of 29 CFR 2520.104b–1, including paragraph (c) of that section relating to the use of electronic media.

(3) The plan administrator may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed—

(i) The lesser of: (A) The actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus

(ii) The cost of mailing or delivery of the document.

(c) *Documents to be furnished.* For purposes of paragraph (a) of this section, and subject to paragraph (d) of this section, a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, shall be entitled to request and receive a copy of any:

(1) Periodic actuarial report. For this purpose the term "periodic actuarial report" means any—

(i) Actuarial report prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals; and

(ii) Study, test (including a sensitivity test), document, analysis or other information (whether or not called a "report") received by the plan from an actuary of the plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled, recurring intervals.

(2) Quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary; and

(3) Application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

(d) *Limitations and exceptions.* For purposes of this section, reports and applications (and related determinations) required to be disclosed under this section shall not include:

(1) Any report or application that was furnished to the requester within the 12-month period immediately preceding the date on which the request is received by the plan;

(2) Any report or application that, as of the date on which the request is received by the plan, has been in the plan's possession for 6 years or more;

(3) Any report described in paragraph (c)(1) and (c)(2) of this section that, as of the date on which the request is received by the plan, has not been in the plan's possession for at least 30 days; except that, if the plan administrator elects not to furnish any such document, the administrator shall furnish a notice, not later than 30 days after the date on which request is received by the plan, informing the requester of the existence of the document and the earliest date on which the document can be furnished by the plan.

(4) Any information or data which served as the basis for any report or application described in paragraph (c) of this section, although nothing herein shall limit any other right that a person may have to review or obtain such information under the Act; or

(5)(i) Any information within a report or application that the plan administrator reasonably determines to be either:

(A) individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager, adviser, or other person (other than an employee of the plan) preparing a financial report described in paragraph (c)(2) of this section; or

(B) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

(ii) For purposes of paragraph (d)(5)(i)(B) of this section, the term "proprietary information" means trade secrets and other non-public information (e.g., processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the plan, may cause, or increase a reasonable risk of, financial harm to the plan, a contributing employer, or entity providing services to the plan.

(iii) The plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary.

(iv) A plan administrator shall inform the requester if the plan administrator withholds any information described in paragraph (d)(5)(i) of this section from a report or application requested under paragraph (b) of this section.

(e) *Persons entitled to request documents.* For purposes of this section, a plan participant, beneficiary, employee representative or contributing employer entitled to request and receive reports and applications includes:

(1) Any participant within the meaning of section 3(7) of the Act;

(2) Any beneficiary receiving benefits under the plan;

(3) Any labor organization representing participants under the plan;

(4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act.

■ 3. In § 2520.104b–30, revise paragraph (a) to read as follows:

§ 2520.104b–30 Charges for documents.

(a) *Application.* The plan administrator of an employee benefit plan may impose a reasonable charge to cover the cost of furnishing to participants and beneficiaries upon their written request as required under section 104(b)(4) of the Act, copies of the following information, statements or documents: The latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. Except where explicitly permitted under the Act, no charge may be assessed for furnishing information, statements or documents as required by other provisions of the Act, which include, in part 1 of title I, sections 104(b)(1), (2), (3) and (c) and 105(a) and (c).

* * * * *

Signed at Washington, DC, this 22nd day of February 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–4097 Filed 2–26–10; 11:15 am]

BILLING CODE 4510–29–P

POSTAL SERVICE

39 CFR Parts 111 and 121

Nomenclature Change Relating to the Network Distribution Center Transition

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) and other related manuals and publications, pursuant to the ongoing transition of USPS® bulk mail centers (BMC) to network distribution centers (NDC), by replacing all text references to "BMC" with "NDC" concurrent with other DMM revisions scheduled for March 2010. The Postal Service is planning to issue DMM Issue 300 in May 2010, containing all DMM revisions from May 11, 2009 through the May 2010 issue date. The changes to the DMM described in this document will be reflected in that Issue 300 of the DMM. We are similarly revising our regulations in Part 121 of Title 39, *Code of Federal Regulations,* to reflect the BMC to NDC terminology change.

DATES: *Effective Date:* March 14, 2010.

FOR FURTHER INFORMATION CONTACT: Kevin Gunther at 202–268–7208 or Shibani Gambhir at 202–268–6256.

SUPPLEMENTARY INFORMATION:

Background: The BMC network was established in the 1970s to process Parcel Post®, Bound Printed Matter, Media Mail®, Standard Mail® and Periodicals. Fluctuations in volume and changes in the mailing habits of the public and large mailers have necessitated changes to the USPS business model relative to BMC processing and transportation. To fully utilize our existing BMC facilities and consolidate transportation, we are changing our mail flow processes through the new NDC network. As part of this change, we are converting BMCs to NDCs. We began implementation of the NDC concept in May 2009 and this transition continues to date.

The Postal Service is taking another step towards the implementation of the NDC concept by effecting the name change, from BMC to NDC, within the DMM, other related manuals and publications, and postage statements. This revision will be limited to the change in nomenclature only. There will be no changes to mailing standards, service standards, or USPS processes resulting from this action. The Postal Service expects to be proposing changes to the standards surrounding the preparation, entry, and deposit of mailpieces pursuant to final implementation of the NDC concept. Any such changes will be the subject of future **Federal Register** notices.

As a reminder, on August 3, 2009, the Postal Service changed all of its applicable labeling lists to effect the name change from BMC to NDC. At that time, mailers were provided a 73-day transitional period to make the changes to their software applications. Mailers are now urged to review their operations to assure that these software changes have been made.

One of these nomenclature changes will update the description of the "BMC Presort" (or "BMC PRSRT") and "OBMC Presort" (or "OBMC PRSRT") price markings, for Parcel Select® mailpieces, in DMM 402.2.5.2. Mailers will be required to change these markings to "NDC Presort" (or "NDC PRSRT") and "ONDC Presort" (or "ONDC PRSRT") respectively. Mailers will also be required to make changes to the human-readable content line, corresponding to the content identifier number (CIN), of those sack and tray labels bearing a BMC reference, as displayed in DMM Exhibit 708.6.2.4, *3-Digit Content Identifier Numbers.* Similar to the period allowed for changes to labeling lists, mailers will be provided a 73-day transitional period, from March 14, 2010, with an effective date of May 26, 2010, to make changes to their software applications.

With this action, the Postal Service will be revising the text of the DMM, including all applicable Publication 95, *Quick Service Guide,* and Notice 123, *Price List,* references as follows:

Current text	Revised text
Bulk Mail Center	Network Distribution Center.
BMC	NDC.
Destination Bulk Mail Center	Destination Network Distribution Center.
DBMC	DNDC.
Origin Bulk Mail Center	Origin Network Distribution Center.
OBMC	ONDC.
Return Bulk Mail Center	Return Network Distribution Center.
RBMC	RNDC.

In addition, we are revising the caption title of 39 CFR 121.1 to correctly capitalize the term "First-Class Mail."

The Postal Service adopts changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1. The Postal Service also amends 39 CFR Part 121.

List of Subjects in 39 CFR Part 111 and 121

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 and 121 are amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3633, and 5001.

[The USPS will process a global name substitution from "Bulk Mail Center" to "Network Distribution Center," from "BMC" to "NDC," from "Destination Bulk Mail Center" to "Destination Network Distribution Center," from "DBMC" to "DNDC," from "Origin Bulk Mail Center" to "Origin Network Distribution Center," from "OBMC" to "ONDC," from "Return Bulk Mail Center" to "Return Network Distribution Center," and from "RBMC to RNDC;" revising Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) effective March 14, 2010. These revisions will not be separately itemized as a part of this document.]

PART 121—SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

■ 2. The authority citation for 39 CFR Part 121 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 3. In § 121.1, revise the section heading to read as set forth below:

§ 121.1 First-Class Mail.

* * * * *

■ 4. In § 121.2, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 121.2 Periodicals.

(b) * * *

(3) Periodicals that qualify for a Destination Network Distribution Center containerized rate, that are accepted before the day-zero Critical Entry Time at the proper destination NDC in the contiguous 48 states, and that are addressed for delivery in the contiguous 48 states, have a service standard of 1 or 2 days, corresponding to the standard for mail qualifying for the destination ADC rate, based on whether the destination ADC and SCF are in the same building.

(4) Periodicals that qualify for a Destination Network Distribution Center containerized rate, that are accepted before the day-zero Critical Entry Time at the proper destination NDC in the 48 contiguous states, and that are addressed for delivery in the states of Alaska or Hawaii, or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 5 to 8 days, corresponding to the standard for mail qualifying for the destination ADC rate, which is based on the number of days required for transportation outside of the 48 contiguous states and whether the destination ADC and SCF are in the same building.

* * * * *

■ 5. In § 121.3, revise paragraphs (a)(3), (b)(4), and (b)(5) to read as follows:

§ 121.3 Standard Mail.

(a) * * *

(3) The service standard for intra-Network Distribution Center (NDC) Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is 5 days for each remaining 3-digit ZIP Code origin-destination pair within the same Network Distribution Center service area if the origin and destination are within the contiguous 48 states; the same standard applies to mail that is intra-Alaska, intra-Hawaii, or between the state of Hawaii and the territory of Guam.

* * * * *

(b) * * *

(4) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC have a 5-day service standard, if both the origin and the destination are in the 48 contiguous states.

(5) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands, have a service standard of either 9 or 10 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside of the 48 contiguous states.

■ 6. In § 121.4, revise paragraphs (a)(2), (a)(3), (a)(6), (b)(3) and (b)(4) to read as follows:

§ 121.4 Package Services.

(a) * * *

(2) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 3 days, for each remaining (non-intra-SCF) 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the origin and destination are within the contiguous 48 states and are not served by an Auxiliary Service Facility; and for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(3) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 4 days for each remaining 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the destination delivery address is served by an Auxiliary Service Facility; the same standard applies to all remaining intra-Alaska mail and mail between the state of Hawaii and the territory of Guam.

* * * * *

(6) The service standard for Inbound Surface Parcel Post® pieces (subject to Universal Postal Union rates) is the same as the service standard for domestic Package Services mail from the 3-digit ZIP Code area in which the International Service Center is located to the 3-digit ZIP Code in which the delivery address is located.

(b) * * *

(3) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, which is accepted before the day-zero Critical Entry Time at the proper DNDC or Destination Auxiliary Service Facility, and that originates and destinates in the contiguous 48 states, has a 3-day service standard. Mail that qualifies for a Destination Sectional Center Facility (DSCF) discount, and that is accepted before the day-zero Critical Entry Time at the SCF in the territory of Puerto Rico, has a 3-day service standard if it is destined for the territory of the U.S. Virgin Islands.

(4) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, and that is accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii, or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands has a service standard of either 7 or 8 days, depending on the 3-digit ZIP Code origin-destination pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside of the 48 contiguous states.

■ 7. In Appendix A to Part 121, revise Table 3 and 4 to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

* * * * *

TABLE 3—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Mail class	Destination entry (at appropriate facility)			
	DDU (days)	SCF (days)	ADC (days)	NDC (days)
CONTIGUOUS UNITED STATES				
Periodicals	1	1	1–2	1–2
Standard Mail	2	3	5	.....
Package Services	1	2	3	.....

TABLE 4—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO THE STATES OF ALASKA AND HAWAII, AND THE TERRITORIES OF GUAM, PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Mail class	Destination entry (at appropriate facility)									
	DDU (days)	SCF (days)			ADC (days)			NDC (days)		
		Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI
ALASKA, HAWAII & GUAM, PUERTO RICO & USVI										
Periodicals	1	1–2	1	1–2	1–3 (AK) 7 (JNU) 7 (KTN)	1 (HI) .... 7 (GU) ..	1–2	1–2	6–7	5–6
Standard Mail	2	3	3	3–4	10	10	9	.....	.....	.....
Package Services	1	2	2	2–3	8	8	7	.....	.....	.....

AK = Alaska 3-digit ZIP Codes 995–997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–4172 Filed 3–1–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[Docket No. EPA–R05–RCRA–2009–0762; FRL–9121–2]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting Michigan final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on October 9, 2009, at 74 FR 52161 and provided for public comment. The public comment period ended on November 16, 2009. We received comments from one commenter. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and authorizing the State's changes through this final action. This final rule authorizes Michigan for new regulations which they have not been previously authorized for.

DATES: The final authorization will be effective on March 2, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–RCRA–2009–0762. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy. You may view and copy Michigan's application from 9 a.m. to 4 p.m. (local time), at the following addresses: U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois, contact: Judith Greenberg, (312) 886–4179; or Michigan Department of Natural Resources and Environment, Waste and Hazardous Materials Division, Constitution Hall, 4th Floor, 525 West Allegan Street, Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer, (517) 373–9548.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Greenberg, Michigan Regulatory Specialist, RCRA Programs Section (LR–8J), Land and Chemicals Division, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–4179, or e-mail *greenberg.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Michigan final authorization to operate its hazardous waste program with the changes described in the authorization application. Michigan has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Michigan subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Michigan has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

1. Do inspections and require monitoring, tests, analyses, or reports;
2. Enforce RCRA requirements and suspend or revoke permits; and
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Michigan is being authorized by today's action are already effective and are not changed by today's action.

D. Proposed Rule

On October 9, 2009 (74 FR 52161), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Michigan's hazardous waste program and opened our decision to public comment. The agency received comments from one individual who questioned whether EPA impermissibly adopted rules promulgated pursuant to non-HSWA authority and rules promulgated as "less stringent than HSWA," including the RCRA Burden Reduction Initiative (Revision Checklist 213). The commenter argued that, through RCRA, Congress has barred EPA and authorized States from promulgating regulations that are less stringent than HSWA. HSWA changed many aspects of hazardous waste management under RCRA. The legislative history of HSWA (98 Cong. Senate Report 284, HSW Leg. Hist. 30, pages 6–7) explains, in part:

> "These amendments also recognize that safe disposal, storage and treatment opportunities are limited and that the most effective way to protect human health and the environment is to minimize the opportunities for exposure by reducing or eliminating the generation of hazardous waste as expeditiously as possible. Rather than creating a rigorous regulatory program, provisions are included to encourage generators to voluntarily reduce the quantity and toxicity of all wastes. The amendments do not authorize the EPA or any other organization or person to intrude into the production process or production decisions of individual generators. Taken as a whole, the reported bill emphasizes two concepts. First, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Second, waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment."

After passage of HSWA, EPA distinguished rules promulgated by EPA pursuant to the new HSWA authority from rules promulgated pursuant to the authority that pre-dated, but was not supplanted by, HSWA: EPA referred to the latter as "non-HSWA" rules. The issue of which authority, HSWA or non-HSWA, EPA exercises in each EPA rulemaking is distinguishable from EPA's determination of whether a new authority is "more stringent" or "less stringent" than the regulations that had been promulgated earlier and are being revised. EPA explains the authority it is using, HSWA or non-HSWA, in each rulemaking. That explanation is generally found in the **Federal Register** notice for each proposed and final rule in the discussion of how the regulatory changes will be administered and enforced in the State.

Regulations determined to be "more stringent" under HSWA or non-HSWA authority are regulations which each State must adopt to retain authorization for its hazardous waste program. HSWA regulations are not all "more stringent" than the regulations promulgated under RCRA before HSWA. Nor did Congress require all HSWA regulations to be more stringent; nothing in the statute, and no language in the legislative history, directs EPA to promulgate only "more stringent" provisions under HSWA authority.

Since the passage of HSWA, EPA has been highly selective when designating which new regulations will apply directly in every State immediately upon the effective date of the new regulations. When new regulations are promulgated under HSWA authority, those regulations characterized by EPA as more stringent apply directly in all States, including States with authorized hazardous waste programs, and such regulations are implemented and enforced directly and immediately by EPA until the State is authorized to implement and enforce those regulations. Once those regulations are authorized as a part of the State hazardous waste program, they become the Federally enforceable requirements in that State.

The commenter questioned whether it was permissible for EPA to allow a State to adopt rules promulgated by EPA as "less stringent than HSWA." EPA exercises discretionary authority as provided by Congress in section 2002 of RCRA, 42 U.S.C. 6912, to regulate hazardous waste to protect human health and the environment and, barring explicit language in the statute, nothing in the act or amendments thereto prohibits EPA from promulgating new regulations that are "less stringent" or "neutral" relative to regulations that were promulgated earlier. If EPA promulgates new regulations to replace existing regulations, the newer regulations are, upon their effective date, the Federal requirements against which a State program is compared when reviewing a revision to an authorized State hazardous waste program. The "less stringent" requirements are the Federal requirements under RCRA in States without authorized hazardous waste programs. Those newer regulations which are less stringent than former regulations, may be, but are not required to be, adopted by States to retain an authorized hazardous waste program.

Section 3009 of RCRA, 42 U.S.C. 6929, bars a State from imposing less stringent requirements than those authorized under Subchapter III of RCRA respecting the same matter governed by such regulations. There is no bar prohibiting a State from imposing more stringent requirements and there is no bar prohibiting a State from adopting Federal requirements which are promulgated by EPA as less stringent or neutral requirements as compared to

regulations that were promulgated by EPA earlier. If a State adopts and is authorized for those "less stringent" Federal regulations, the Federally enforceable RCRA requirements in the State are those newly authorized requirements.

Finally, the commenter questioned whether the RCRA Burden Reduction initiative impermissibly removed the manifest notification required to be sent to each State with the shipment of waste-derived fertilizers citing to sections 3002 and 3009 of RCRA, 42 U.S.C. 6922 and 6929. Section 3002(a)(5) of RCRA, 42 U.S.C. 6922(a)(5), directs the Administrator to promulgate regulations to establish standards applicable to generators as may be necessary to protect human health and the environment regarding the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (except where waste was generated) for which a permit was issued. Pursuant to section 3009 of RCRA, 42 U.S.C. 6929 (and as is explained in more detail in the RCRA Burden Reduction Initiative Final Rule (71 FR 16862)), no regulation adopted under RCRA can be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste generated in that State or transported to a treatment, storage, or disposal facility within that State. The Burden Reduction Initiative (BRI), which became effective as an optional rule on May 4, 2006, streamlines EPA's information collection requirements to ensure that only information actually needed and used to implement the RCRA program is collected while retaining the goals of protecting human health and the environment. EPA promulgated all of the rules included in Michigan's revisions pursuant to the authority granted to EPA by Congress under RCRA. Those rules, including the BRI rule, were finalized after full consideration of all comments submitted in a timely manner. By adopting the rules promulgated by EPA, Michigan revised its hazardous waste program to be equivalent to and consistent with the Federal program. Pursuant to 42 U.S.C. 6926(b), EPA has the authority to authorize State programs that are equivalent to and consistent with the Federal program.

Changes in manifest requirements made to earlier Federal requirements by the BRI generally concern notice under the land disposal regulations at 40 CFR part 268. The BRI does not prohibit any State from requiring a copy of a manifest. States were not required to adopt the BRI and States that do not adopt the BRI can require a copy of the manifest. A State is not barred from adopting the BRI by section 3009 of RCRA.

EPA believes the Agency has the necessary authority to promulgate the rules in the Federal program, including those in this revision to Michigan's authorized hazardous waste program. Moreover, EPA believes that Michigan has the necessary authority to adopt the rules that are included in this revision of the Michigan authorized hazardous waste program.

E. What has Michigan previously been authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141), and on January 7, 2008 (73 FR 1077), effective January 7, 2008.

F. What changes are we authorizing with this action?

On September 26, 2008, Michigan submitted a complete program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. We have determined that Michigan's hazardous waste management program revision satisfies all requirements necessary to qualify for final authorization. Therefore, we are granting Michigan final authorization for the following program changes:

Description of Federal requirement	Revision checklist [1]	**Federal Register** date and page	Analogous State authority
Non-wastewaters from Dyes and Pigments.	206, 206.1	February 24, 2005, 70 FR 9138; as amended on June 16, 2005, 70 FR 35032.	R 299.9311, R 299.9413, and R 299.9627, effective September 11, 2000. R 299.9204(2) and (2)(o)–(o)(v)(B), R 299.9222, and R 299.11003(1)(i), (j), and (u), and (2), effective March 17, 2008.
Uniform Hazardous Waste Manifest.	207, 207.1	March 6, 2005, 70 FR 10776; as amended on June 16, 2005, 70 FR 35037.	R 299.9601(1) and (2)(c) and (e), effective December 16, 2004. R 299.9102(z), R 299.9105(m) and (n); R 299.9207(3)(b)(i)–(ii); R 299.9304(1), (1)(a) and (b), and (6); R 299.9305(1), (1)(d) and (d)(i) and (e); R 299.9306(11) and (12); R 299.9307(3); R 299.9309(2)(c); R 299.9310(2) and (2)(c) and (3); R 299.9405(2)(f) and (g) and (3)(d) and (f); R 299.9409(1)–(3) and (5); R 299.9608(1), (2), and (5)–(8); R 299.9610(2) and (5); and R 299.11003(1)(k) and (l) and (n), effective March 17, 2008.
Methods Innovation; SW–846 ...	208, 208.1	June 14, 2005, 70 FR 34538; as amended on August 1, 2005, 70 FR 44150.	R 299.9211(1)(a) and (4), effective February 15, 1989. R 299.9630 and R 299.9631, effective June 21, 1994. R 299.9812(4), R 299.9813(4), and R 299.9814(5), effective October 15, 1996. R 299.9212(1)(a), R 299.9230(2) and (3), R 299.9311, R 299.9413, R 299.9508(1)(b), R 299.9627, and R 299.9637, effective September 11, 2000. R 299.9601(1), (2)(h) and (3), R 299.9619(1) and (8), and R 299.9809(2)(b), effective December 16, 2004.

Description of Federal requirement	Revision checklist [1]	Federal Register date and page	Analogous State authority
			R 299.9203(1)(e); R 299.9212(1)(a) and (a)(iv) and (2)(a) and (b); R 299.9227(3)(c) and (6); R 299.9504(4)(a) and (b), (15) and (21); R 299.9615; R 299.9808(8) and (10); R 299.11001; R 299.11002; R 299.11003(1)(h), (i), (j), (m), (p), (r), (t), (u), (v); and R 299.11005(1), (2), (4), (5) and (7), effective March 17, 2008.
Mercury Containing Equipment	209	August 5, 2005, 70 FR 45508	R 299.9109(g), (i), and (j), effective September 11, 2000. R 299.9101(r); R 299.9228(1)(c)–(f); (2), (2)(h) and (i), (4)(a) and (d), (5)(b), and (11); R 299.9503(1)(j); and R 299.11003(1)(w), effective March 17, 2008.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures—"Headworks Exemption".	211	October 4, 2005, 70 FR 57769	R 299.9203(1)(c)(i) and (c)(i)(D) and (E), (c)(ii) and (c)(ii)(A)–(O), (c)(iv) and (c)(iv)(A)–(G), (c)(vi), and (c)(vii), effective March 17, 2008.
NESHAP: Final Standards for Hazardous Waste Combusters (Phase I Final Replacement Standards and Phase II).	212	October 12, 2005, 70 FR 59402.	R 299.9508(1) and (1)(b), effective September 11, 2000. R 299.9601(2)(i), effective December 16, 2004. R 299.9504(4), (12), (13), (20) and (21); R 299.9519(5)(k), (l) and (l)(i)–(iv) and (6); R 299.9521(3)(c) and (6); R 299.9623(2) and (3); R 299.9624 (rescinded); R 299.9625 (rescinded); R 299.9626 (rescinded); R 299.9640(1), (2), (4) and (5); R 299.9808(4), (5)(b) and (d), (8) and (10); R 299.11001(1) and (3); and R 299.11003(1)(v), effective March 17, 2008.
Burden Reduction Initiative	213	April 4, 2006, 71 FR 16862	R 299.9618, effective December 28, 1985. R 299.9631 and R 299.9632(1) and (3), effective June 21, 1994. R 299.9617(1) and (3), effective October 15, 1996. R 299.9311, R 299.9413, R 299.9508(1)(a), (b) and (d) and (5), R 299.9627, and R 299.9638(1) and (4), effective September 11, 2000. R 299.9502(7); R 299.9601(2)(b), (d), and (f)–(h), (3) and (9); R 299.9614(1)(a) and (2); R 299.9619(1) and (8); R 299.9626(10); and R299.9703(5), effective December 16, 2004. R 299.9204(1)(u)(v)(A)–(C) and (10)(i); R 299.9504(1), (3), (14), (17), (19) and (20); R 299.9519(5)(m); R 299.9605(1) and (4); R 299.9607(1) and (4); R 299.9609(1)(a) and (5); R 299.9612(1) and (2); R 299.9613(1), (3)–(5) and (7); R 299.9615(1) and (7); R 299.9623(4) and (11); R 299.9629(10); R 299.9710(6) and (16); R 299.9808(8) and (10); and R 299.11003(1)(h), (m), (n), (p), (r), (u) and (v), effective March 17, 2008.
Corrections to Errors in the Code of Federal Regulations.	214	July 14, 2006, 71 FR 40254 ...	Michigan Compiled Laws 324.11148, effective September 1, 1998. R 299.9618, effective December 28, 1985. R 299.9702 and R 299.9704, effective April 20, 1988. R 299.9628(1) and (4), effective November 19, 1991. R 299.9217, R 299.9630, R 299.9631, and R 299.9632(1) and (3), effective June 21, 1994. R 299.9214(2) and (3), R 299.9617(1) and (3), R 299.9812(3), (4) and (7), R 299.9813(3), (6) and (7), and R 299.9814(4), (5) and (8), effective October 15, 1996. R 299.9210(2), R 299.9312(1) and (3), R 299.9616(1) and (4), and R 299.9634, effective September 22, 1998. R 299.9206(1)(b)–(d) and(2)–(5), R 299.9230(1)(a)(iii), (2) and (3), R 299.9311, R 299.9413, R 299.9605(1) and (4), R 299.9627, R 299.9638(1) and (4), R 299.9701, R 299.9708(6), R 299.9709, R 299.9803(1)(d) and (e), (5) and (6), and R 299.9804, effective September 11, 2000. R 299.9106(b), (j), (m) and (w), R 299.9109(g) and (p), R 299.9202(2), R 299.9220, R 299.9601(2)(b), (g) and (h), and (3) and (9), R 299.9614(1)(a) and (2), R 299.9619(1) and (8), R 299.9635(12)(d), (d)(ii) and (f), R 299.9639(5)(f), R 299.9703(8)(a), R 299.9706, R 299.9809(1)(f), (2)(b)(ii) and (3), and R 299.9815(2)(a), effective December 16, 2004.

Description of Federal requirement	Revision checklist [1]	**Federal Register** date and page	Analogous State authority
			R 299.9104(p), R 299.9204(1)(x), (2)(f)(ii), (2)(g) and (g)(iii)(A) and (B) and (vi), (2)(k), (3) and (3)(b), (7)(f) and (8)(a), R 299.9212(1)(c), (6)(a) and (9), R 299.9222, R 299.9224, R 299.9225, R 299.9228(4)(a), (5)(b) and (11), R 299.9309(1) and (4), R 299.9503(1)(c), R 299.9504(1)(e) and (g) and (17), R 299.9519(4) and (9)(a), R 299.9605(1) and (4), R 299.9612, R 299.9613(1), (4), (5) and (7), R 299.9615(1) and (7), R 299.9623(4) and (5), R 299.9705(5) and (6), R 299.9710(3)(a) and (e), (6), (10) and (17)(a), R 299.9808(4), (8) and (10), and R 299.11003(1)(h)–(k), (m), (n), (p), (q), (t), (u), (v), (w) and(x), effective March 17, 2008.
Cathode Ray Tubes Rules	215	July 28, 2006, 71 FR 42928 ...	R 299.9102(b), (w), (x) and (y), R 299.9109(x) and (y), R 299.9204(1)(z)(i)–(iv), R 299.9230, R 299.9231, and R 299.11003(1)(i), effective March 17, 2008.

[1] Revision Checklists generally reflect changes to Federal regulations pursuant to a particular **Federal Register** notice; EPA publishes these checklists as aids to States to use for development of their authorization revision application. *See* EPA's RCRA State Authorization Web Page at *http://www.epa.gov/epawaste/laws-regs/state/index.htm.*

EQUIVALENT STATE-INITIATED CHANGES

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9101(a) "Aboveground tank"	10/15/1996	Words "is able to be" changed to "and can be."
MAC R 299.9101(b) "Act"	12/16/2004	Words "Act No. 451 of the Public Acts of 1994, as amended, being 324.101 et seq. of the Michigan Compiled Laws" changed to "1994 PA 451 § 324.101."
MAC R 299.9101(c) "Act 138"	12/16/2004	Same as above.
MAC R 299.9101(d) "Act 181"	12/16/2004	Same as above.
MAC R 299.9101(e) "Act 207"	12/16/2004	Same as above.
MAC R 299.9101(f) "Act 218"	12/16/2004	Same as above.
MAC R 299.9101(g) "Act 236"	12/16/2004	Same as above.
MAC R 299.9101(h) "Act 300"	12/16/2004	Same as above.
MAC R 299.9101(i) "Act 306"	12/16/2004	Same as above.
MAC R 299.9101(j) "Act 368"	12/16/2004	Same as above.
MAC R 299.9101(k) "Act 399"	12/16/2004	Same as above.
MAC R 299.9101(o) "Administrator"	12/16/2004	Words "United States EPA" changed to "EPA."
MAC R 299.9101(x) "Authorized representative"	6/21/1994, renumbered as (x) effective 3/17/2008.	Word "of" changed to "who has" and word "responsibility" changed to "responsibilities."
MAC R 299.9101(x) "Boiler"	12/16/2004, renumbered as (z) effective 3/17/2008.	Words "the provisions of" deleted.
MAC R 299.9102(a) "CERCLA"	6/21/1994, renumbered as (c) effective 3/17/2008.	Term added; term is used elsewhere in the rules.
MAC R 299.9102(e) "Closed portion"	10/15/1996, renumbered as (h) effective 3/17/2008.	Word "that" changed to "the" and word "which" changed to "that."
MAC R 299.9102(g) "Commingling"	10/15/1996, renumbered as (j) effective 3/17/2008.	Term added; term is used in Part 3 of the rules.
MAC R 299.9102(h) "Component"	10/15/1996, renumbered as (k) effective 3/17/2008.	Word "the" inserted.
MAC R 299.9102(g) "Confined aquifer"	6/21/1994, renumbered as (l) effective 3/17/2008.	Words "that is," "it is" and "that" inserted, word "of" changed to "that have a" and word "containing" changed to "contains."
MAC R 299.9102(k) "Consolidation"	10/15/1996, renumbered as (n) effective 3/17/2008.	Term added; term is used in Part 3 of rules.
MAC R 299.9102(n) "Constituent"	12/16/2004, renumbered as (o) effective 3/17/2008.	Words "the provisions of" deleted.
MAC R 299.9102(m) "Construction permit"	10/15/1996, renumbered as (p) effective 3/17/2008.	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9102(m) "Corrosion expert"	6/21/1994, renumbered as (v) effective 3/17/2008.	Words "such as" deleted and word "the" inserted.
MAC R 299.9103(b) "Element"	12/16/2004	Word "constituent" deleted.
MAC R 299.9103(c)(i) "Elementary neutralization unit" ...	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9103(e) "EPA acknowledgment of consent"	10/15/1996, renumbered as (g) effective 12/16/2004.	Word "which" inserted.
MAC R 299.9103(g) "EPA identification number" (deleted).	12/16/2004	Term deleted (replaced with term "Site identification number").
MAC R 299.9103(h) "EPA region"	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9103(i) "Equivalent method"	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9103(m) "Existing portion"	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9103(n) "Existing tank system"	12/16/2004	Word "will" changed to "shall."

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9103(q) "Federal hazardous materials transportation act".	6/21/1994, renumbered as (x) effective 12/16/2004.	Public Law citation changed from "89–670" to "93–633."
MAC R 299.9103(s) "Facility mailing list"	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9103(v) "Floodplain"	6/21/1994, renumbered as (bb) effective 12/16/2004.	Word "which" changed to "that."
MAC R 299.9103(x) "Freeboard"	6/21/1994, renumbered as (ff) effective 12/16/2004.	Word "therein" changed to "in the tank or surface impoundment dike."
MAC R 299.9103(y) "Free liquids"	6/21/1994, renumbered as (gg) effective 12/16/2004.	Word "which" changed to "that" and word "under" changed to "at."
MAC R 299.9103(bb) "Final closure"	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to" and words "the provisions of" deleted.
MAC R 299.9104(f) and (f)(i)–(viii) "Hazardous waste management unit".	10/15/1996	Word "is" changed to "means."
MAC R 299.9104(g) "Hazardous waste number"	6/21/1994	Word "which" changed to "that."
MAC R 299.9104(m) "Inactive portion"	6/21/1994	Word "which" changed to "that."
MAC R 299.9104(o) "In-ground tank"	6/21/1994, renumbered as (t) effective 9/11/2000.	Word "specified" inserted, word "whereby" changed to "and which has," words "the tank" changed to "its," word "is" deleted, word "that" changed to "the," and word "tank" changed to "devise."
MAC R 299.9105(c) "Landfill cell"	10/15/1996, renumbered as (d) effective 12/16/2004.	Word "which" changed to "that."
MAC R 299.9105(q) "Military munitions"	12/16/2004	Words "any of the following" inserted.
MAC R 299.9106(c) "On-site treatment facility"	10/15/1996	Words "which is" and "and" inserted and word "those" changed to "the."
MAC R 299.9106(e) "Operating license"	12/16/2004	Words "pursuant to" changed to "under."
MAC R 299.9106(h) "Partial closure"	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9106(r) "Primary exporter"	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9106(u)(ii) "Processing"	12/16/2004	Word "the" deleted.
MAC R 299.9107(i) "Remedial action plan"	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9107(q) "Scrap metal"	12/16/2004	Word "can" changed to "may."
MAC R 299.9107(s) "Site identification number"	12/16/2004	New term added to replace removal of "EPA identification number."
MAC R 299.9107(z) "Speculative accumulation"	12/16/2004	Word "it" changed to "material," words "can show" changed to "shows that," and words "requirements are met" inserted.
MAC R 299.9107(bb) "Staging pile"	12/16/2004	Words "in accordance with the requirements of" changed to "pursuant to."
MAC R 299.9107(dd) "Sump"	9/11/2000, renumbered as (ee) effective 12/16/2004.	Word "subsequent" changed to "later."
MAC R 299.9108(a) "Tank"	6/21/1994	Word "which" changed to "that" and word "and" added.
MAC R 299.9108(c) "Thermal treatment"	6/21/1994, renumbered as (d) effective 9/11/2000.	Word "which" changed to "that" word "the" changed to "all of the."
MAC R 299.9108(g) "Totally enclosed treatment facility"	9/11/2000	Word "thereof" deleted and words "of a hazardous waste" added.
MAC R 299.9108(k) "Treatment"	6/21/1994, renumbered as (m) effective 9/11/2000.	Word "which" changed to "that" and word "the" changed to "all of the."
MAC R 299.9108(n) "Trial burn"	6/21/1994, renumbered as (p) effective 9/11/2000.	Word "under" deleted and words "pursuant to the" inserted.
MAC R 299.9108(o) "Trial operation"	6/21/1994, renumbered as (q) effective 9/11/2000.	Word "under" deleted and words "that is" and "pursuant to" inserted.
MAC R 299.9109(b) "Underground tank"	6/21/1994	Word "specified" inserted, word "the" changed to "and which has its," and words "of which is" deleted.
MAC R 299.9109(g) "Uppermost aquifer"	6/21/1994, renumbered as (n) effective 9/11/2000.	Word "this" changed to "the."
MAC R 299.9109(l) "Vessel"	6/21/1994, renumbered as (ee) effective 9/11/2000.	Words "includes every description of" changed to "means" and word "which" changed to "that."
MAC R 299.9109(n) "Waste"	6/21/1994, renumbered as (gg) effective 9/11/2000.	Words "that is" added.
MAC R 299.9109(hh) "Waste management area"	9/11/2000	Word "then" inserted and word "one" changed to "1."
MAC R 299.9109(p) and (p)(i)–(iii) "Wastewater treatment unit".	6/21/1994, renumbered as (ii) and (ii)(i)–(ii) effective 9/11/2000.	Word "which" changed to "that," word "under" changed to "pursuant to the provisions of," and words "or 'tank system' specified" inserted.
MAC R 299.9109(q) "Water (bulk shipment)"	6/21/1994, renumbered as (jj) effective 9/11/2000.	Word "which" changed to "that."
MAC R 299.9109(r) "Well"	6/21/1994, renumbered as (kk) effective 9/11/2000.	Words "which is" added.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9109(kk) "Wetland"	10/15/1996, renumbered as (ll) effective 9/11/2000.	Words "No. 203 of the Public acts of 1979, as amended, being § 281.701 et seq. of the Michigan Compiled Laws" deleted and words "part 303 of the" inserted, and word "those" changed to "the."
MAC R 299.9109(t) "Zone of engineering control"	6/21/1994, renumbered as (mm) effective 9/11/2000.	Word "that" deleted and words "which is" and "and which" inserted.
MAC R 299.9201(1) and (2)	9/22/1998	Modified to reflect the fact that sections 47 and 4 of the former Hazardous Waste Management Act, 1979 PA 64, as amended (Act 64) have been recodified in sections 48 and 3 of Part 111, Hazardous Waste Management, of Act 451, respectively.
MAC R 299.9202(1)(b), (v)(A) and (B); (2) and (2)(e); (3); (4); and (5).	10/15/1996	Word "which" changed to "that."
MAC R 299.9202(1)(b)(i), (iv)	10/15/1996	Words "one of the materials" changed to "a material."
MAC R 299.9202(1)(b)(i)(B) and (ii)	9/11/2000	Word "products" changed to "product," word "are" changed to "is," word "wastes" changed to "waste," words "they are" changed to "it is," and word "their" changed to "its."
MAC R 299.9202(1)(b)(v)	10/15/1996	Word "other" changed to "is another."
MAC R 299.9202(1)(b)(v)(A)	10/15/1996	Words "which are" inserted, words "these constituents" deleted, and word "which" inserted.
MAC R 299.9202(1)(b)(vi)	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9202(6)(a)	12/16/2004	Reference to R 299.9107 corrected.
MAC R 299.9202(7)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9203(1) and (1)(b); (2) and (2)(b); (4)(b); (5)(a) and (b); and (6).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9203(4)(c)(iii) and (6)(a)	12/16/2004	Word "one" changed to "1."
MAC R 299.9203(4)(c)(iii)(B)	9/11/2000	Words "by the person claiming the exclusion" inserted.
MAC R 299.9203(4)(c)(iii)(C)(2)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9203(4)(e)	3/17/2008	Words "1 or more" changed to "either or both."
MAC R 299.9204(1), (4) and (6)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9204(1)(b), (n), (u)(iv); (2)(a), (i) and (l); (7) and (7)(c)(ii), (d), and (e)(iii)(B); (8); (9); (10)(b), (g)(i) and (vii) and (j); and (11).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9204(1)(f) and (g)	12/16/2004	Reference to R 299.9107 corrected.
MAC R 299.9204(1)(h)(iv)	6/21/1994	Word "constituting" changed to "that constitutes."
MAC R 299.9204(1)(i) and (j)	10/15/1996	Word "that" changed to "which" and word "which" inserted.
MAC R 299.9204(1)(k)	10/15/1996	Word "if" inserted, words "provided it is shipped" deleted, words "the residue" inserted, words "is shipped," and word "is" inserted.
MAC R 299.9204(1)(n)	12/16/2004	Word "U.S." deleted and "subsequent to" changed to "after."
MAC R 299.9204(2)(b)	10/15/1996	Word "soils" changed to "soil."
MAC R 299.9204(2)(g)(ix)	3/17/2008	Based on a petition from the United States Postal Service (USPS), ink generated by the USPS in its automated facer canceled systems was added to the list of wastes not considered hazardous wastes for the purposes of Part 111 of Act 451 and its rules provided the requirements of subrule (g) of the rule are met.
MAC R 299.9204(2)(h)	12/16/2004	Words "of this subrule" deleted.
MAC R 299.9204(2)(h)(ii)	12/16/2004	Word "will" changed to "shall."
MAC R 299.9204(7)(f)	3/17/2008	Revised to be consistent with the new language in R 299.9308(1).
MAC R 299.9205(1)(c); (2)(b)(i) and (b)(vi)–(x) and (d); (3)(a) and (b); (4)(a)(i), (ii), and (v), (xi), (b)(i) and (ii); (5)(a), (e), and (g)–(i).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9205(2)	12/16/2004	Words "(7), (8), and (9)" changed to "(6) and (7)" and words "the provisions of" deleted.
MAC R 299.9205(2)(b)(ii) and (iii)	10/15/1996	Word "which" changed to "that," words "permitted or licensed" changed to "in compliance with the applicable requirements," words "pursuant to the provisions" deleted, and words "act 641, act 245, or act 348" changed to "parts 31, 55 and 115 of the act."
MAC R 299.9205(2)(b)(xi)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to" and "the provisions of" deleted.
MAC R 299.9205(4)(a)(ix)(C)(2)	12/16/2004	Word "EPA" changed to "site."

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9205(4)(a)(xii) and (4)(b)(iv)	12/16/2004	Words "Except as otherwise noted in this paragraph" inserted, words "in accordance with the provisions of" changed to "pursuant to" and new sentence allowing municipal household waste collection programs to accumulate conditionally exempt small quantity generator waste on-site for not more than 1 year.
MAC R 299.9205(4)(a)(xiii)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9205(4)(a)(xiv)	12/16/2004	Word "one" changed to "1."
MAC R 299.9205(4)(b)(iv)	12/16/2004	Word "in accordance with the provisions of" changed to "pursuant to," words "except for a municipal household waste collection program" inserted, and word "in" inserted.
MAC R 299.9212(1)(d) and (6)(a)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9212(3)(h)	12/16/2004	Words "the provisions of" deleted and word "are" changed to "is."
MAC R 299.9212(7)	12/16/2004	Words "the provisions of" deleted and word "will" changed to "shall."
MAC R 299.9227(4)	3/17/2008	Word "all" changed to "both."
MAC R 299.9227(5)(l)	3/17/2008	Word "MAC" deleted.
MAC R 299.9228(1) and (1)(a); (2)(a), (d), (e), (f)(i)(A) and (B), (g); (3); (4)(c)(iii)(B); and (5)(d) and (e); (8); and (9).	12/16/2004	Words "in accordance with" deleted, words "pursuant to" inserted, word "then" inserted, word "subrule" inserted, words "shall be complied with" deleted, and words "the requirements of" deleted.
MAC R 299.9303(1)–(4)	12/16/2004	Word "EPA" deleted and word "site" inserted, words "in accordance with the provisions of" changed to "pursuant to" and word "to" inserted.
MAC R 299.9306(1) and (5)	12/16/2004	Words "(4), (5), and (6)" changed to "(4), (5), (6), (7), (8), (9), and (10)" and words "a construction permit or' inserted.
MAC R 299.9306(1)(a), (a)(ii)–(iii), (d) and (f)	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9306(1)(a)(i)	12/16/2004	Words "the provisions of" deleted and language added regarding alternatives to the 50-foot setback requirement for certain container storage in situations where the generator is unable to comply with this provision or the appropriate authority determines that an alternative arrangement would be more protective of human health and the environment.
MAC R 299.9306(1)(d)(ii) and (4)(i)(iii)(B)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9306(2)	12/16/2004	Words "construction permit or an operating" inserted, and word "the provisions of" deleted.
MAC R 299.9306(4)	12/16/2004	Words "the provisions of" deleted and words "a construction permit or" inserted.
MAC R 299.9306(4)(b)(i)–(iii) and (4)(k)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9306(4)(e)	12/16/2004	Words "the provisions of" and "the requirements of" deleted.
MAC R 299.9306(5)	12/16/2004	Words "a construction permit or" inserted, words "the provisions of" deleted, and words "the requirements of" deleted.
MAC R 299.9306(7)(g)	3/17/2008	Word "with" deleted.
MAC R 299.9307(1)	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9307(4)	3/17/2008	Words "the data submitted under R 299.9308(1)" inserted and words "each biennial report" deleted.
MAC R 299.9307(5)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9307(7)	12/16/2004	Words "subrules (2) and (4)" changed to "subrule (4)."
MAC R 299.9308(1) and (2)	3/17/2008	Wording modified to reflect how information typically required in a biennial report is actually collected in Michigan.
MAC R 299.9309(2)(a) and (b)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9309(2)(g)(i) and (ii) and (2)(i)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9310(1)	12/16/2004	Words "the requirements of" deleted.
MAC R 299.9310(2)(a)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9401(1) and (5) (renumbered from (6) to (5)).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9401(4)	12/16/2004	Words "the requirements of" deleted.
MAC R 299.9401(6) (renumbered from (7) to (6)	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9402	12/16/2004	Words "an EPA" changed to "site" and words "from the administrator" deleted.
MAC R 299.9404(2)(b)(i)	3/17/2008	Word "EPA" changed to "site."

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9405	10/15/1996	Entire rule modified to provide more consistency with the regulations codified in 49 CFR.
MAC R 299.9405(3)(b)(i)	3/17/2008	Word "EPA" changed to "site."
MAC R 299.9410(1)(f)	9/11/2000	Word "whether" changed to "if."
MAC R 299.9410(2)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9410(3)(a)–(c)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9501(3) and (4)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9502(1) and (1)(b); (2) and (2)(a), (b)(i) and (i)(C), (E) and (ii); (3)(a); (5); (6); (8); (9); (10); and (13).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9502(2)(b)(i)(A), (B) and (E)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9502(3)	12/16/2004	Word "the" deleted.
MAC R 299.9502(10)	12/16/2004	Words "the provisions of" deleted and words "in accordance with" changed to "pursuant to."
MAC R 299.9502(11)(c)	12/16/2004	Word "regulations" changed to "regulation."
MAC R 299.9503(1), (2), (3), and (4)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9503(1)(a)	10/15/1996	Words "parts 31, 55, and 115 of the" and words "641, act 348, or act 245" deleted.
MAC R 299.9503(1)(f)	10/15/1996	Words "as applicable" inserted and words "both of" deleted.
MAC R 299.9503(1)(i)(x)	3/17/2008	Reference to R 299.9603(1)(b) to (f) corrected.
MAC R 299.9503(4)(c)	10/15/1996	Words "part 31, 111, or 201 of the" inserted and words "307, act 64, act 245" deleted.
MAC R 299.9504(1)(b)–(c), (2), and (16)	12/16/2004	Word "by" changed to "pursuant to."
MAC R 299.9504(1)(d), (2), (3), and (14)	12/16/2004	Words "by the provisions of" changed to "pursuant to."
MAC R 299.9504(1)(f), (18), and (19)	12/16/2004	Words "the requirements of" deleted.
MAC R 299.9504(1)(h)	3/17/2008	Provision added so that the agency can see how public comments were addressed and how applications were revised earlier in the construction permit application process.
MAC R 299.9504(4)(b) and (11)(b)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9504(4)(b)(ii)	12/16/2004	Word "R 299.9623" changed to "40 C.F.R. § 264.343."
MAC R 299.9504(5)(a)	10/15/1996	Word "all" changed to "any."
MAC R 299.9504(5)(a)(v) and (b)	10/15/1996	Subrule (b) deleted and new subrule (5)(a)(v) added to provide clarification regarding the prohibition of dilution as a form of treatment for any hazardous wastes rather than just toxicity characteristic wastes.
MAC R 299.9504(5)(c)–(f)	12/16/2004	Word "whether" changed to "if."
MAC R 299.9504(6)(a), (7)(a), (8)(a), (9) and (10)	12/16/2004	Words "in the provisions of" changed to "pursuant to."
MAC R 299.9504(8)(c)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9506(2)	6/21/1994	Word "under" changed to "pursuant to the provisions of."
MAC R 299.9506(2)(a)	6/21/1994	Word "such" changed to "the," words "that are" inserted, words "all of" inserted, and word "this" changed to "the."
MAC R 299.9506(2)(a)(i), (ii), (iii)(B), (c), (d) and (f); and (6)(a), (b), and (b)(i)(D).	9/11/2000	Word "one" changed to "1," word "two" changed to "2," word "three" changed to "3," word "five" changed to "5," word "ten" changed to "10," word "when" changed to "if," word "method" changed to "methods," words "subsequent to" changed to "following."
MAC R 299.9506(2)(a)(ii)(C) and (6)(a)(iii)	6/21/1994	Word "under" changed to "pursuant to."
MAC R 299.9506(4)(d)	9/22/1998	Modified to reflect the fact that the former Environmental Response Act, 1982 PA 307 (Act 307), has been recodified in Part 201, Environmental Response, of Act 451.
MAC R 299.9506(6)	6/21/1994	Words "that is" inserted.
MAC R 299.9506(6)(f)	6/21/1994	Word "such" changed to "the," words "include consideration of" changed to "consider" and word "factors" inserted.
MAC R 299.9506(8)	9/11/2000	Word "264.100" deleted.
MAC R 299.9508(1)(c), (g) and (i)	10/15/1996	Words "part 111 of" inserted, and words "section 22(3)"changed to "section 23(3)."
MAC R 299.9509(1) and (2)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9510(1)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9513(1) and (3)(b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9514(2)	12/16/2004	Word "when" changed to "if."
MAC R 299.9514(2)(b)	12/16/2004	Word "might" changed to "may."
MAC R 299.9514(2)(c)	12/16/2004	Word "by" changed to "pursuant to."
MAC R 299.9514(4)	9/22/1998	Modified to correct references to the provisions of R 299.9511 which have also been modified.
MAC R 299.9516(8)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9517(1) and (2)(b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451
MAC R 299.9518(1) and (2)(a) and (b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451 and subrule (2)(a) has been modified to reflect the fact that section 22 of the former Act 64 has been recodified in section 23 of Part 111 of Act 451.
MAC R 299.9519(1); (3)(a); (5); (6)(a)(v) and (b); (9)(c); (10)(d); (12); and (13).	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9519(2)	12/16/2004	Words "the provisions of" deleted and words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9519(3)(c) and (d)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9519(3)(e)	3/17/2008	Word "R 299.9521" changed to "R 299.9522."
MAC R 299.9519(11)(a)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9520(4)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451 and the fact that section 48 of the former Act 64 has been recodified in section 51 of Part 111 of Act 451.
MAC R 299.9521(3) and (3)(a)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9522(1)–(3)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9601(2); (4); and (5)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9601(2)(p)	12/16/2004	Provision added requiring interim status facilities to comply with R 299.9639 for disposal of corrective action management unit-eligible waste in hazardous waste landfills.
MAC R 299.9601(3)(b)	12/16/2004	Words "the provisions of" changed to "pursuant to."
MAC R 299.9601(7)	10/15/1996, renumbered as (8) effective 9/11/2000.	Word "47" changed to "48" and words "part 111 of" inserted.
MAC R 299.9602(1)(a) and (c) and (2)	9/22/1998	Modified to reflect the fact that the former Water Resources Commission Act, 1929 PA 245 (Act 245), has been recodified in Part 31, Water Resources Protection, of Act 451.
MAC R 299.9602(1)(b)	9/22/1998	Modified to reflect the fact that the former Air Pollution Control Act, 1956 PA 345 (Act 348), has been recodified in Part 55, Air Pollution Control, of Act 451.
MAC R 299.9603(1)(b)	9/22/1998	Modified to reflect the fact that the former Act 245 has been recodified in Part 31 of Act 451.
MAC R 299.9603(1)(c)	9/22/1998	Modified to reflect the fact that the former Shorelands Protection and Management Act, 1970 PA 245, has been recodified in Part 323, Shorelands Protection and Management, of Act 451.
MAC R 299.9603(2)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9603(3)(c)	9/22/1998	Modified to reflect the fact that the former Act 348 has been recodified in Part 55 of Act 451.
MAC R 299.9604(2)	9/22/1998	Modified to reflect the recodification of the former Act 64 of Part 111 of Act 451.
MAC R 299.9607(2)(b)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9607(3)	12/16/2004	Words "the requirements of" deleted.
MAC R 299.9608(6)	12/16/2004, renumbered as (4) effective 3/17/2008.	Words "the provisions of" deleted.
MAC R 299.9609(1)	3/17/2008	Words "or in an alternate location approved by the director or the director's designee" inserted.
MAC R 299.9610(1)	3/17/2008	Revised to reflect how information typically required in a biennial report is actually collected in Michigan.
MAC R 299.9610(2)(a) and (c)	12/16/2004	Word "EPA" changed to "site."

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9610(4)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to."
MAC R 299.9611(1)	6/21/1994	Words "that is" inserted.
MAC R 299.9611(3)(a) and (a)(i)–(iii)	6/21/1994	Modified to clarify provisions for groundwater monitoring waivers to allow owners or operators the ability to monitor an entire TSDF for environmental effects, thereby allowing the integration of site-wide corrective action remediation programs into hazardous waste management unit monitoring programs at a more economical cost.
MAC R 299.9611(3)(a)(iii) and (5)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9611(3)(b)	6/21/1994	Word "under" changed to "pursuant" and word "this" changed to "the."
MAC R 299.9612(1)(c)	9/11/2000	Word "one" changed to "1" and word "then" inserted.
MAC R 299.9612(1)(c)(i)	6/21/1994	Word "this" changed to "the."
MAC R 299.9612(1)(c)(iii)	9/11/2000	Words "whether or not" changed to "if."
MAC R 299.9612(1)(d) and (f)	9/22/1998	Modified to reflect the fact that the former Act 245 and Act 307 have been recodified in Parts 31 and 201 of Act 451, respectively.
MAC R 299.9612(1)(e)	9/11/2000	Word "whether" changed to "if."
MAC R 299.9612(1)(g)	9/22/1998	Modified to reflect the recodification of the former Act 64 in Part 111 of Act 451 and the fact that sections 47 and 48 of the former Act 64 have been recodified in sections 48 and 51 of Part 111 of Act 451, respectively.
MAC R 299.9613(2)	3/17/2008	Word "more" changed to "less."
MAC R 299.9619(3), (6)(a)(iv) and (c), and (7)	12/16/2004	Words "in accordance with the provisions of" changed to "pursuant to" and words "the provisions of" deleted.
MAC R 299.9619(5), (5)(a) and (b)	9/11/2000	Subrule added in order to provide for alternative leachate collection and removal system design and operating practices if certain conditions are met.
MAC R 299.9619(6)(a)(iii)	9/11/2000	Revised to clarify that in order to provide a minimum base for root penetration, the top component of the additional material shall consist of not less than 15 centimeters of topsoil. Thus, the total thickness of the protective layer shall not be less than 60 centimeters, depending upon the implications of the maximum depth of frost penetration.
MAC R 299.9621(1)(c)(vi)	10/15/1996	Modified to provide a more accurate test method by which owners and operators will be required to determine the permeability of the clay base of the land-based unit.
MAC R 299.9629(1), (3)(a) and (b), (6), (8)(a)–(c), (9), and (11).	12/16/2004	Words "in accordance with" changed to "pursuant to."
MAC R 299.9629(1)(a) and (b), (3), (3)(a)(i)–(v), and (b)(i)–(iii).	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9703(2)–(4) and (6)	9/11/2000	Word "one" changed to "1" and "ten" changed to "10."
MAC R 299.9703(9)	12/16/2004	Words "265.90(f), and 265.110(d)" inserted and word "and" deleted.
MAC R 299.9705(1) and (1)(a) and (b)	3/17/2008	Amended to clarify requirements regarding surety bonds used to demonstrate financial assurance for closure and postclosure.
MAC R 299.9708(5), (9), (9)(c), (10), (10)(a)–(b), and (11).	9/11/2000	Words "party or parties" changed to "person or persons."
MAC R 299.9710(4), (5), and (9)(b)(i)	9/11/2000	Word "one" changed to "1."
MAC R 299.9710(9)(b)(i)	9/11/2000	Words "and/or" changed to "or" and words "or both" inserted.
MAC R 299.9710(9)(e)	9/11/2000	Words "in the case of corporations that are" changed to "a corporation is" and word "then" inserted.
MAC R 299.9710(14)	9/11/2000	Word "R 299.9613(2)" changed to "R 299.9613(3)."
MAC R 299.9712(1)	9/22/1998	Modified to reflect the recodification of the former Act 46 in Part 111 of Act 451.
MAC R 299.9801(1)(b) and (7)	6/21/1994	Word "combination" changed to "combining."
MAC R 299.9801(8)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9802 (entire rule rescinded)	10/15/1996	Rule rescinded because hazardous waste being burned for energy recovery is now subject to regulation under R 299.9808.
MAC R 299.9803(6)(a)	9/11/2000	Words "whether or not" changed to "if."

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of State-initiated modification	Description of change
MAC R 299.9803(6)(b)	9/11/2000	Word "then" inserted and word "six" changed to "6" and last two sentences corrected to insert missing wording.
MAC R 299.9808(1)	9/11/2000	Words "and (3)" changed to "to (4)."
MAC R 299.9808(2) and (3)(c)	12/16/2004	Words "regulation under" deleted.
MAC R 299.9808(2)(a)	12/16/2004	Words "under the provisions of" changed to "pursuant to."
MAC R 299.9808(2)(c)	12/16/2004	Words "the provisions of" deleted and words "under the provisions of" changed to "pursuant to."
MAC R 299.9808(3)(c)	12/16/2004	Words "the provisions of" deleted.
MAC R 299.9808(5)	12/16/2004, renumbered as (6) effective 3/17/2008.	Words "the requirements of" deleted.
MAC R 299.9808(8), (8)(a)(ii) and (8)(c)	12/16/2004, renumbered as (9), (9)(a)(ii) and (9)(c), effective 3/17/2008.	Words "the provisions of" deleted.
MAC R 299.9809(1)(a)	12/16/2004	Words "except a mixture of used oil and halogenated hazardous waste listed under R 299.9213 or R 299.9214" inserted.
MAC R 299.9809(2)(c)	12/16/2004	Word "are" deleted.
MAC R 299.9809(2)(n)	9/11/2000	Word "then" inserted.
MAC R 299.9809(2)(o)	9/11/2000	Word "when" inserted.
MAC R 299.9815(3)(a)(i) and (e)(i) and (ii)	12/16/2004	Word "EPA" changed to "site."
MAC R 299.9819	12/16/2004	Words "the requirements of" deleted and word "R 299.9401(7)" changed to "R 299.9401(6)."
MAC R 299.11003(1)(b)	9/11/2000	Adoption by reference of 40 CFR Part 63, subparts EEE and LLL added.
MAC R 299.11004(5)	3/17/2008	Updated address where to obtain a document.
MAC R 299.11007(2)	12/16/2004	Updated address where to obtain a document.
MAC R 299.11008(2)	12/16/2004	Updated address where to obtain a document.

G. Where are the revised State rules different from the Federal rules?

The most significant differences between the State rules we are authorizing and the analogous Federal rules are summarized below. It should be noted that this summary does not describe every difference or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete rules to ensure that they understand the requirements with which they will need to comply.

There are aspects of the Michigan program which are more stringent than the Federal program. All of these more stringent requirements are or will become part of the Federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements are found at (references are to the Michigan Administrative Code):

Michigan does not allow containment buildings, making the State requirements more stringent than the Federal requirements at 40 CFR part 264 subpart DD, 40 CFR 265 subpart DD, and 40 CFR part 264 appendix I, Tables 1 and 2.

Michigan's regulations at R 299.9601(1), (2)(b), (2)(c), (2)(h), (2)(i), and (3); R 299.9608(1), (6) and (8); R 299.9615; and R 299.9702(1) are more stringent than the Federal analogs at 40 CFR Sections 265.56(b), 265.71, 265.72, 265.142(a), 265.174, 265.190(a), 265.193, 265.194, 265.197, 265.201, and 265.340(b)(1) since the State requires compliance with standards equivalent to 40 CFR part 264 rather then 40 CFR part 265.

Michigan's regulations at R 299.11002(1) and (2) are more stringent than the Federal analogs at 40 CFR Section 260.11(d) and (d)(1) since the State adopts updated versions of the "Flammable and Combustible Liquids Code."

H. Who handles permits after the authorization takes effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

EPA will continue to implement and administer the RCRA program in Indian Country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian Country." *Washington Dep't of Ecology* v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing a State's statutes and regulations that comprise a State's authorized hazardous

waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This final rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB.

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have Federalism implications (*i.e.,* 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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).

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 17, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–4307 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XU72

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2010 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 2010, through 1200 hrs, A.l.t., March 10, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 8,414 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2010 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,314 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 24, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 25, 2010.

James P. Burgess,

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

[FR Doc. 2010–4278 Filed 2–25–10; 4:15 pm]

BILLING CODE S

Proposed Rules

Federal Register
Vol. 75, No. 40
Tuesday, March 2, 2010

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 HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 113 and 191

[USCBP–2009–0021]

RIN 1505–AC18

Drawback of Internal Revenue Excise Tax

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking, published in the **Federal Register** on October 15, 2009, that proposed amendments to title 19 of the Code of Federal Regulations to: preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code; and add a basic importation and entry bond condition to foster compliance with the amended drawback provision. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

DATES: *Effective Date:* The effective date of this withdrawal is March 2, 2010.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Regulations and Rulings, Office of International Trade, (202) 325–0047.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2009, Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register** (74 FR 52928) proposing changes to parts 113 and 191 within title 19 of the Code of Federal Regulations. The proposed amendments would: (1) Preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code; and (2) add a basic importation and entry bond condition to the CBP regulations to foster compliance with the amended drawback provision. The comment period was extended twice to allow additional time for interested parties to submit comments on the proposed rulemaking. The comment period ended on January 12, 2010.

Withdrawal of Notice of Proposed Rulemaking

CBP is withdrawing the notice of proposed rulemaking published in the **Federal Register** (74 FR 52928) on October 15, 2009, so that relevant issues involved in the proposed rulemaking may be further considered.

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved: February 25, 2010.

Michael Mundaca,

Acting Assistant Secretary of the Treasury.

[FR Doc. 2010–4379 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 28 and 44

[Docket No. TTB–2009–0005; Notice No. 102; Re: Notice Nos. 100 & 101]

RIN 1513–AB77

Drawback of Internal Revenue Excise Taxes

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking, published in the **Federal Register** on October 15, 2009, that proposed conforming amendments to reflect proposed Customs and Border Protection regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

DATES: The proposed rulemaking is withdrawn on March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20220; telephone (202) 453–2097.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published in the **Federal Register** a notice of proposed rulemaking to amend its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930. See Notice No. 100 at 74 FR 52937. Specifically, TTB's proposed rulemaking would have provided conforming regulations to reflect proposed Customs and Border Protection (CBP) regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. TTB later extended the comment period closing date for its proposal until January 14, 2010. See Notice No. 101, November 27, 2009, at 74 FR 62266.

The CBP notice of proposed rulemaking regarding drawback of internal revenue excise tax, on which TTB's proposed rulemaking was based, also was published in the **Federal Register** on October 15, 2009, at 74 FR 52928. CBP twice extended the comment period on its proposal to allow additional time for interested parties to comment on the proposed rulemaking. See the CBP notices of November 4,

2009 (74 FR 57125), and November 25, 2009 (74 FR 61585). The CPB proposal's comment period ended on January 12, 2010.

Withdrawal of Notice No. 100

The proposed CBP regulations published on October 15, 2009, and on which TTB's proposed rulemaking was based, are being withdrawn to allow for further consideration of the issues involved. Consistent with the CBP action, TTB withdraws its proposed rulemaking, Notice No. 100, published in the **Federal Register** on October 15, 2009 at 74 FR 52928.

Dated: February 3, 2010.

John J. Manfreda,

Administrator.

Approved: February 25, 2010.

Michael Mundaca,

Acting Assistant Secretary (Tax Policy).

[FR Doc. 2010–4374 Filed 3–1–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR 2550

RIN 1210–AB35

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed rule under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). Upon adoption, the proposed rule would implement provisions of a statutory prohibited transaction exemption, and would replace guidance contained in a final rule, published in the **Federal Register** on January 21, 2009, that was withdrawn by the Department pursuant to a Notice published in the **Federal Register** on November 20, 2009. Upon adoption, the proposed rule affects sponsors, fiduciaries, participants and beneficiaries of participant-directed individual account plans, as well as providers of investment and investment advice related services to such plans.

DATES: Written comments on the proposed regulations should be submitted to the Department of Labor on or before May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500. This is not a toll-free number.

ADDRESSES: To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov* (enter into subject line: 2010 Investment Advice Proposed Rule) or by using the Federal eRulemaking portal at *http://www.regulations.gov.* Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, *Attn:* 2010 Investment Advice Proposed Rule, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

A. Background

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),[1] and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. On February 4, 2009, the Department published in the **Federal Register** (74 FR 6007) an invitation for public comment on a proposed 60 day extension of the effective dates of the final rules in order to afford the Agency the opportunity to review legal and policy issues relating to the final rules. The Department also invited public comments on the provisions of those rules and on the merits of rescinding, modifying or retaining the rules. In response to this invitation, the Department received 28 comment letters.[2] On March 20, 2009, the Department adopted a 60 day extension of the final rule. (*See* 74 FR 11847). In order to afford the Department additional time to consider the issues raised by commenters, the effective and applicability dates were further delayed until November 18, 2009 (74 FR 23951), and then until May 17, 2010 (74 FR 59092).

B. Comments Received

A number of the commenters expressed the view that the final rule raises significant issues of law and policy, and should be withdrawn. Several of these commenters argued that the class exemption contained in the final rule permits financial interests that would cause a fiduciary adviser, and individuals providing investment advice on behalf of a fiduciary adviser, to have conflicts of interest, but does not contain conditions that would adequately mitigate such conflicts. They asserted that investment advice provided under the class exemption therefore might be tainted by the fiduciary adviser's conflicts. Other commenters expressed concerns about those provisions of the rule relating to the "fee-leveling" requirement under the statutory exemption. In particular, some opined that the Department's interpretation of the statutory exemption's fee-leveling requirement is incorrect for permitting the receipt of varying fees by an affiliate of a fiduciary adviser. As a result, they argued, a fiduciary adviser under such a fee-leveling arrangement has a conflict of interest, and the final rule does not adequately protect against investment advice that is influenced by the financial interests of the fiduciary adviser's affiliates. Commenters who advocated retention of the final rule argued that it contains strong safeguards that would protect the interests of plan participants and beneficiaries.

[1] Section 601 of the Pension Protection Act of 2006 (PPA) added sections 408(b)(14) and 408(g) of ERISA. The PPA also added parallel provisions to the Code at sections 4975(d)(17) and 4975(f)(8). Under Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), 5 U.S.C. App. 1, 92 Stat. 3790, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA should be taken as referring also to the corresponding sections of the Code.

[2] These comments are available on the Department's Web site at: *http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html.*

C. Analysis and Determination

As documented in the Department's regulatory impact analysis (RIA) of the January 2009 final regulation and class exemption, defined contribution (DC) plan participants and IRA beneficiaries often make costly investment errors. Those who receive and follow quality investment advice can reduce such errors and thereby reap substantial financial benefit. The Department estimated that the PPA statutory exemption as implemented by the final regulation, together with the final class exemption, would extend investment advice to 21 million previously unadvised participants and beneficiaries, generating $13 billion in annual financial benefits at a cost of $5 billion, for a net annual financial benefit of $8 billion.

In arriving at its estimates, the Department assumed that on average participants and beneficiaries who are advised make investment errors at one-half the rate of those who are not. The Department further assumed that different types of investment advice arrangements on average would be equally effective: arrangements operating without need for exemptive relief, those operating pursuant to the PPA, and those operating pursuant to the class exemption all would reduce investment errors by one-half on average.

The Department's assumptions regarding the effectiveness of different advice arrangements were subject to uncertainty, particularly as applied to its assessment of the final class exemption's effects. The Department has determined that the issues raised by commenters are sufficient to cast doubt as to whether the class exemption's conditions are adequate to mitigate advisers' conflicts. Based on this determination regarding the class exemption, the Department has decided to withdraw the final rule. Notice of the withdrawal of the final rule was published in the **Federal Register** on November 20, 2009 (74 FR 60156).

In order to address the absence of regulatory guidance on the statutory exemption that results from withdrawal of the January 2009 final rule, the Department is publishing in this notice proposed regulations that, upon adoption, implement the statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and parallel provisions in the Code. The proposed regulations do not include a class exemption. The Department notes that, while relief would have been available under the withdrawn class exemption, the statutory exemption does not provide prohibited transaction relief for any individualized advice rendered to individuals following the furnishing of investment recommendations generated by a computer model described in the statute unless such advice on its own meets the requirements of the statute (i.e., is generated by a computer model under a computer-model arrangement or is rendered under a fee-leveling arrangement).

D. Overview of Proposed Regulations

Proposed Sec. 2550.408g–1 tracks the requirements under section 408(g) of ERISA that must be satisfied in order for the investment advice-related transactions described in section 408(b)(14) to be exempt from the prohibitions of section 406. Paragraph (a) of the proposal describes the general scope of the statutory exemption and regulation. Paragraph (b) of the proposal sets forth the requirements that must be satisfied for an arrangement to qualify as an "eligible investment advice arrangement" and for the exemption to apply. Paragraph (c) of the proposal defines certain terms used in the regulation. The Appendix to the proposal contains a non-mandatory model disclosure form that may be used to satisfy certain of the requirements contained in paragraph (b). Proposed Sec. 2550.408g–2 addresses the requirements for electing to be treated as the only fiduciary and fiduciary adviser by reason of developing or marketing a computer model or an investment advice program used in an "eligible investment advice arrangement." *See* ERISA section 408(g)(11)(A).

The proposed regulations are nearly identical to the provisions of the January 2009 final rule that implement the statutory exemption. The Department's explanations of such provisions provided in the publication of the January 2009 final rule and in the publication of the related August 2008 proposed rule (73 FR 49896 (Aug. 22, 2008)), to the extent not modified or superseded in the January 2009 publication, should be read as applicable to the regulations being proposed in this notice. The Department is not providing a new description of the provisions.

The Department notes, however, that the proposed regulations contain clarifying language intended to address comment letters, mentioned above, that expressed concerns with the provisions of the final rule that interpret the statutory exemption's fee-leveling requirement. In particular, some commenters observed that the final rule would permit the receipt of varying fees by an affiliate of a fiduciary adviser, and further opined that this would permit an affiliate of a fiduciary adviser to establish economic incentives for either the fiduciary adviser, or individuals providing investment advice on its behalf, to recommend investments that pay varying fees to the affiliate. Therefore, commenters argued, the final rule would not adequately protect participants and beneficiaries from advice influenced by the affiliates' interests. In response, the Department is emphasizing in the proposal that, as stated in Field Assistance Bulletin 2007–1 (February 2, 2007) (FAB 2007–1), the receipt by a fiduciary adviser of any payment from any party (including an affiliate of the fiduciary adviser), or used for the benefit of such fiduciary adviser, that is based, in whole or part, on investments selected by participants or beneficiaries would be inconsistent with the fee-leveling requirement of the statutory exemption.[3] The Department also is further clarifying that this limitation applies both to an entity that is retained to render advice, and to any employee, agent, or registered representative of such an entity. Thus, even though an affiliate of a fiduciary adviser may receive fees that vary depending on investment options selected, any provision of financial or economic incentives by an affiliate (or any other party) to a fiduciary adviser or any individual employed by such fiduciary adviser (*e.g.,* an employee providing advice on its behalf or an individual responsible for supervising such an employee) to favor certain investments would be impermissible. These are reflected in the proposal at paragraph (b)(3)(i)(D) of Sec. 2550.408g–1.

The proposed regulation also provides, in connection with investment advice arrangements that use computer models, that a computer model shall be designed and operated to avoid investment recommendations that inappropriately distinguish among investment options within a single asset class on the basis of a factor that cannot confidently be expected to persist in the future (paragraph (b)(4)(i)(E)(3)). While some differences between investment options within a single asset class, such as differences in fees and expenses or management style, are likely to persist

[3] FAB 2007–1 provides that "the fees or other compensation (including salary, bonuses, awards, promotions or any other thing of value) received, directly or indirectly *from an employer, affiliate or other party,* by a fiduciary adviser (or used for the adviser's benefit) may not be based, in whole or part, on the investment options selected by participants or beneficiaries." *See* FAB 2007–1, footnote 11 (emphasis added).

in the future and therefore to constitute appropriate criteria for asset allocation, other differences, such as differences in historical performance, are less likely to persist and therefore less likely to constitute appropriate criteria for asset allocation. Asset classes, in contrast, can more often be distinguished from one another on the basis of differences in their historical risk and return characteristics.

E. Effective Date

The Department proposes that the regulations contained in this notice will be effective 60 days after publication of the final regulations in the **Federal Register**. The Department invites comments on whether the final regulations should be made effective on a different date.

F. Request for Comment

The Department invites comments from interested persons on the proposed regulations. In particular, the Department solicits comments on the conditions applicable to investment advice arrangements that use computer models under proposed § 2550.408g–1(b)(4)(i), including responses to the following questions.

What investment theories are generally accepted for purposes of § 2550.408g–1(b)(4)(i)(A), and what investment practices are consistent or inconsistent with such theories? Should this regulation specify such theories and require their application? Should the regulation dictate the bases for model parameters such as the probability distribution of future returns to assets classes or particular investments? Should the regulation specify certain practices as required by generally accepted investment theories, or certain other practices as proscribed by such theories? What are examples of investment theories that are not generally accepted? Should this regulation expressly proscribe the application of certain such theories?

What historical data should be taken into account in determining a model's expectation for future performance of asset classes and specific investment alternatives? Should the regulation specify minimum standards for the data, such as a minimum number of years of experience to be included in the data?

What types of criteria are appropriate and objective bases for asset allocation pursuant to proposed § 2550.408g–1(b)(4)(i)(D)? Should this regulation expressly designate some criteria as appropriate and objective and/or other criteria as not appropriate or not objective? Should it do both, thereby establishing a list of criteria that models must consider to the exclusion of all others? For example, the regulation could provide that computer models must consider only the historical risks and returns of different asset classes as a whole, information about the participants, and the expenses and asset allocation of each investment option under the plan. Is a fund's past performance relative to the average for its asset class an appropriate criterion for allocating assets to the fund? Under what if any conditions would it be consistent with generally accepted investment theories and with consideration of fees pursuant to § 2550.408g–1(b)(4)(i)(B) to recommend a fund with superior past performance over an alternative fund in the same asset class with average performance but lower fees? Should the regulation specify such conditions? On what if any bases can a fund's superior past performance be demonstrated to derive not from chance but from factors that are likely to persist and continue to affect performance in the future? Should the use of a fund's superior past performance as a criterion for allocating assets to the fund be conditioned on such demonstration? How, if at all, should a model take into account investment management style? For example, all else equal, should a model ascribe different levels of risk to passively and actively managed investment options?

To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov* (enter into subject line: 2010 Investment Advice Proposed Rule) or by using the Federal eRulemaking portal at *http://www.regulations.gov.* Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, *Attn:* 2010 Investment Advice Proposed Rule, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The comment period for the proposed regulations will end May 5, 2010. The Department believes that this period of time will afford interested persons an adequate amount of time to analyze the proposal and submit comments. Written comments on the proposed regulations should be submitted to the Department on or before May 5, 2010.

G. Regulatory Impact Analysis

Need for Regulatory Action

As documented in the Department's regulatory impact analysis of the August 2008 proposed regulation, there is evidence that many participants in participant-directed defined contribution (DC) plans and beneficiaries of individual retirement accounts (IRAs) (collectively hereafter, "participants") make poor investment decisions due to flawed information or reasoning. These participants may pay higher fees and expenses than necessary for investment products and services, engage in excessive or poorly timed trading or fail to adequately diversify their portfolios and thereby assume uncompensated risk, take more or less than optimal levels of compensated risk, and/or pay unnecessarily high taxes. Financial losses (including foregone earnings) from such mistakes likely amounted to more than $85 billion in 2009. These losses compound and grow larger as workers progress toward and into retirement.

The Department anticipates that full implementation of the PPA under this proposed regulation will ensure that quality, expert investment advice is provided to the greatest number of participants. The Department further anticipates that the increased investment advice resulting from the rule will improve participants investment decisions and results and reduce investment related errors and expenses.

In the statutory exemption, Congress called on the Department to provide regulatory guidance addressing the certification of computer model investment advice programs, a model form for disclosure of fees and other compensation received by the fiduciary adviser or an affiliate, and rules under which only one fiduciary adviser may elect to be treated as a fiduciary.[4] This proposed regulation addressed these issues, as well as additional questions raised by employers and other fiduciaries regarding their responsibilities in connection with other provisions of the statutory exemption.

Alternatives

Executive Order 12866 requires an economically significant regulation to

[4] *See* sections 408(g)(3)(C), 408(g)(8)(B), and 408(g)(11)(A) (flush language) of ERISA.

include an assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to a planned regulation, and an explanation of why the planned regulatory action is preferable to the identified potential alternatives. In formulating this proposed regulation, the Department considered two alternative approaches that are discussed below.

Detailed, Prescriptive Substantive Standards for Computer Model Design

To assure the quality of investment advice provided pursuant to the statutory exemption, this proposed regulation relies primarily on safeguards against bias that might otherwise arise from advisers' conflicts of interest. These safeguards include, for example, strong procedural standards for certification of computer models and audits of investment advice programs, and strict, carefully drawn standards for level-fee arrangements that broadly proscribe all manner of variable payments to advisers.

As an additional approach to ensuring that investment advice is not tainted by conflicts of interest, the Department considered requiring that a computer model consider only the historical risks and returns of different asset classes as a whole, information about the participants, and the expenses and asset allocation of each investment option under the plan. However, the Department believes that the approach it has taken will effectively ensure that advice is not tainted by conflicts of interest, so the addition of such a restriction would be unnecessary. The Department also believes that such a restriction may inhibit innovations in investment advice that utilizes additional information, which could reduce the economic benefits of the statutory exemption. Nonetheless, the Department, as reflected in questions appearing earlier in this preamble, is interested in further exploring the merits of adopting such an alternative approach.

Additional Exemptive Relief

The Department's January 2009 final rule included a class exemption that would establish alternative conditions for granting prohibited transaction relief in connection with the provision of investment advice. The Department considered retaining such a class exemption in this new proposed rule. However, after considering issues raised by public comments received in response to the Department's February 4, 2009, notice, the Department decided to withdraw the class exemption. As discussed earlier, a number of commenters questioned the adequacy of the final class exemption's conditions to mitigate the potential for investment adviser self-dealing. The Department decided not to retain the class exemption in this proposal, because it found that the questions raised in these comments cast sufficient doubt on the conditions' adequacy to mitigate advisers' conflicts. The regulatory impact of the decision to withdraw the class exemption is discussed below.

Withdrawal of the Class Exemption

As documented in the Department's regulatory impact analysis (RIA) of the January 2009 final regulation and class exemption, defined contribution (DC) plan participants and IRA beneficiaries often make costly investment errors. Those who receive and follow quality investment advice can reduce such errors and thereby reap substantial financial benefit. Although the Department anticipated that the final rule would increase the availability of investment advice to DC plan participants and the use of advice by IRA beneficiaries, the Department stated that it was uncertain how changing market conditions might affect the incidence and magnitude of investment errors, as well as the availability, use, and effect of investment advice. The Department estimated that the PPA statutory exemption as implemented by the final regulation, together with the final class exemption, would extend investment advice to 21 million previously unadvised participants and beneficiaries, potentially generating as much as $13 billion in annual financial benefits at a cost of $5 billion, for a net annual financial benefit of $8 billion. In the 2009 final rule's RIA, Department stated its belief that the approach used in the analysis could reflect the long-term effects of these actions.

In arriving at its estimates, the Department assumed that on average participants and beneficiaries who are advised make investment errors at one-half the rate of those who are not. The Department further assumed that different types of investment advice arrangements on average would be equally effective: Arrangements operating without need for exemptive relief, those operating pursuant to the PPA, and those operating pursuant to the class exemption all would reduce investment errors by one-half on average.

The Department's assumptions regarding the effectiveness of different advice arrangements were subject to uncertainty, particularly as applied to its assessment of the final class exemption's effects. In the preamble to the January 2009 final regulation and class exemption, the Department noted evidence that conflicts of interest, such as those that might be attendant to advice arrangements operating pursuant to the class exemption, can sometimes taint advice. Conflicted advisers pursuing their own interests, and the investment managers who compensate them, may profit at the expense of participants and beneficiaries. The conditions attached to the class exemption were intended to ensure that advisers operating pursuant to the class exemption would honor the interests of participants and beneficiaries.

In its February 4, 2009, notice proposing to extend the effective dates of the final regulation and class exemption, the Department solicited public comments on the provisions of those rules and on the merits of rescinding, modifying or retaining the rules. As discussed earlier, a number of commenters raised legal and policy issues concerning the exemption and, in particular, questioned the adequacy of the final class exemption's conditions to mitigate the potential for investment adviser self-dealing.

The Department believes that the questions raised in these comments are sufficient to cast doubt on the conditions' adequacy to mitigate advisers' conflicts. If conflicts are not mitigated, advice might be tainted. Therefore, the Department has set aside its previous assumption that participants and beneficiaries who follow advice delivered pursuant to the final class exemption will commit investment errors at one-half the rate of those who are unadvised, together with its previous conclusion that the final class exemption's benefits justify its cost. Instead, the Department believes that doubts as to whether the final class exemption's conditions are adequate to mitigate conflicts justify withdrawal of the final class exemption.

Impact Assessment

In arriving at its January 2009 estimates of the combined effects of the final regulation and class exemption, the Department assumed that the incidence of investment advice arrangements permissible prior to the PPA would remain unchanged, while investment advice arrangements operating pursuant to the PPA statutory exemption and those operating pursuant to the class exemption would claim equal shares of the estimated growth of advice arrangements.

The Department has now updated its estimates of the costs and benefits of the proposed regulation to reflect the withdrawal of the class exemption. It is

likely that some previously unadvised participants and beneficiaries who would have received advice pursuant to the class exemption will instead receive advice pursuant to the PPA statutory exemption, while others will remain unadvised.

Recently the Administration has taken major steps toward broad financial regulatory reform. On June 17, 2009, the President announced the Administration's proposal for "21st Century Financial Regulatory Reform." The proposal includes provisions designed to strengthen investor protections in ways that the Department believes may beneficially influence the market for investment advice. Comprehensive reforms to the market for financial products and services, together with the PPA's exemptive relief as implemented by the Department's final regulation, may promote the availability of quality, affordable investment advice more than the latter would alone.

The estimates provided in the table below show three possible impacts for the proposed regulation: "low" estimates assume that all of those who would have received advice pursuant to the class exemption instead remain unadvised, "mid" estimates assume that one-half receive advice pursuant to the PPA statutory exemption, and "high" estimates assume that all receive such advice. The Department has updated its estimates to reflect year-end 2008 DC plan and IRA assets. Otherwise, the assumptions and calculations remain the same as presented in the preamble to the January 2009 final regulation and class exemption. The Department's low, middle, and high estimates are presented in Table 1, below.

TABLE 1—EFFECT OF PPA STATUTORY EXEMPTION AS IMPLEMENTED BY PROPOSED REGULATION $BILLIONS, ANNUAL, IN 2008 DOLLARS AND AT 2008 ASSET LEVELS

	Investment errors eliminated	Cost of advice	Net effect
Low	$5.5	$1.5	$3.9
Mid	8.2	2.3	5.9
High	10.9	3.1	7.8

On the basis of these estimates the Department believes that this proposed regulation, in isolation from the withdrawn class exemption, will yield benefits sufficient to justify its costs. The Department continues to believe that DC plan participants and IRA beneficiaries often make costly investment errors, and that those who receive and follow quality investment advice can reduce such errors and thereby reap substantial financial benefit.

H. Executive Order 12866 Statement

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

Pursuant to the terms of the Executive Order, this action, comprising this proposed rule, is economically significant under section 3(f)(1) of the Executive Order because it is likely to have an effect on the economy of $100 million or more in any one year. Accordingly, the Department undertook the foregoing analysis of the action's impact. On the basis of that analysis, the Department believes that the action's benefits justify its costs.

I. Regulatory Flexibility Act

As it did in the January 2009 final rule, the Department hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of the analysis, the Department proposed to continue its usual practice of considering a small entity to be an employee benefit plan with fewer than 100 participants. The Department consulted with the Small Business Administration Office of Advocacy concerning use of this participant count standard for Regulatory Flexibility Act purposes and requested public comment on this issue in the January 2009 final rule. The Department did not receive any comments that address its use of the participant count standard and continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.

J. Congressional Review Act

This proposed regulation is a major rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

K. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the proposed rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

L. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

M. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an ICR to OMB for its request of a new information collection for the previous final rule. OMB approved the ICR on January 9, 2009, under OMB Control Number 1210–0134, which will expire on January 31, 2012.

In connection with the issuance of this proposed rule, the Department submitted a revised ICR to OMB on October 23, 2009, reflecting information collection requirements associated with the PPA statutory exemption. In order to use the statutory exemption to provide investment advice to participants and beneficiaries in participant-directed DC plans and beneficiaries of IRAs (collectively hereafter, "participants"), investment advisory firms are required to make disclosures to participants, hire an independent auditor to conduct a compliance audit, and issue an audit report every year. Investment advice firms following the conditions of the exemption based on computer model-generated investment advice are required to obtain certification of the model from an eligible investment expert. These information collection requirements are designed to safeguard the interests of participants in connection with investment advice covered by the exemption.

This paperwork burden analysis reflects a very minor increase to the estimated number of DC plan sponsors offering advice, the number of DC plan participants utilizing advice, the labor hour rates used to estimate the hour burden, and the postage rate used to estimate the cost burden.[5] All other calculations remain the same as in the January 2009 final rule.

Statutory Exemption Hour and Cost Burden

For purposes of determining the hour and cost burden associated with the statutory exemption, the Department's analysis uses the "mid" estimate discussed under the section above, which assumes that one-half of participants who would have received advice pursuant to the class exemption now will receive advice pursuant to the PPA statutory exemption. The Department estimates that the third-party disclosures, computer model certification, and audit requirements for the statutory exemption will require approximately 4.5 million burden hours with an equivalent cost of approximately $486.7 million and a cost burden of approximately $579.8 million in the first year. In each subsequent year, the total labor burden hours are estimated to be approximately 2.4 million hours with an equivalent cost of approximately $252.6 million and the cost burden is estimated at approximately $430.5 million per year.[6]

These paperwork burden estimates are summarized as follows:

Type of Review: Revised Collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: Statutory Exemption for the Provision of Investment Advice to Participants and Beneficiaries of Participant-Directed Individual Account Plans and IRAs.

OMB Control Number: 1210–0134.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 16,000.

Estimated Number of Annual Responses: 15,156,000.

Frequency of Response: Initially, Annually, Upon Request, when a material change.

Estimated Total Annual Burden Hours: 4,453,000 hours in the first year; 2,428,000 hours in each subsequent year.

Estimated Total Annual Burden Cost: $579,808,000 in the first year; $430,508,000 for each subsequent year.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, Chapter XXV, subchapter F, part 2550 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 6–2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b–1, 2550.408b–1, 2550.408b–19, 2550.408g–1, and 2550.408g–2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107–16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611(g)(3), Public Law 109–280, 120 Stat. 780, 975 (2006).

2. Add § 2550.408g–1 to read as follows:

§ 2550.408g–1 Investment advice—participants and beneficiaries.

(a) In general. (1) This section provides relief from the prohibitions of section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975 of the Internal Revenue Code of 1986, as amended (the Code), for certain transactions in connection with the provision of investment advice to participants and beneficiaries. This section, at paragraph (b), implements the statutory exemption set forth at sections 408(b)(14) and 408(g)(1) of ERISA and sections 4975(d)(17) and 4975(f)(8) of the Code. The requirements

[5] The increase in the estimated number of DC plans offering advice and DC plan participants utilizing advice is due to updating the count to reflect 2006 Form 5500 data, the latest year for which Form 5500 data is available. The counts in the 2009 Final Rule were based on 2005 Form 5500 data. The postage rate was increased to $0.44 from $0.42 due to the January 2009 increase. The labor hour rates were updated to reflect 2009 rates instead of 2008 rates, which were used in the 2009 Final Rule.

[6] If the 'low' estimate were used, which assumes that all of the participants who would have received advice pursuant to the class exemption instead remain unadvised, the statutory exemption will require approximately 4 million burden hours with an equivalent cost of approximately $444.7 million and a cost burden of approximately $579.4 million in the first year. In each subsequent year, the total labor burden hours are estimated to be approximately 2.2 million hours with an equivalent cost of approximately $229.9 million and the cost burden is estimated at approximately $430.1 million per year. If the 'high' estimate were used, which assumes that all of the participants who would have received advice pursuant to the class exemption will receive advice under the statutory exemption, the statutory exemption will require approximately 4.9 million burden hours with an equivalent cost of approximately $528.7 million and a cost burden of approximately $580.2 million in the first year. In each subsequent year, the total labor burden hours are estimated to be approximately 2.7 million hours with an equivalent cost of approximately $275.3 million and the cost burden is estimated at approximately $430.9 million per year.

and conditions set forth in this section apply solely for the relief described in paragraph (b) of this section and, accordingly, no inferences should be drawn with respect to requirements applicable to the provision of investment advice not addressed by this section.

(2) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), or this regulation imposes an obligation on a plan fiduciary or any other party to offer, provide or otherwise make available any investment advice to a participant or beneficiary.

(3) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), or this regulation invalidates or otherwise affects prior regulations, exemptions, interpretive or other guidance issued by the Department of Labor pertaining to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited transaction under section 406 of ERISA or section 4975 of the Code.

(b) Statutory exemption. (1) *General.* Sections 408(b)(14) and 408(g)(1) of ERISA provide an exemption from the prohibitions of section 406 of ERISA for transactions described in section 408(b)(14) of ERISA in connection with the provision of investment advice to a participant or a beneficiary if the investment advice is provided by a fiduciary adviser under an "eligible investment advice arrangement." Sections 4975(d)(17) and (f)(8) of the Code contain parallel provisions to ERISA sections 408(b)(14) and (g)(1).

(2) Eligible investment advice. For purposes of section 408(g)(1) of ERISA and section 4975(f)(8) of the Code, an "eligible investment advice arrangement" means an arrangement that meets either the requirements of paragraph (b)(3) of this section or paragraph (b)(4) of this section, or both.

(3) *Arrangements that use fee-leveling.* For purposes of this section, an arrangement is an eligible investment advice arrangement if—

(i)(A) Any investment advice is based on generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time, although nothing herein shall preclude any investment advice from being based on generally accepted investment theories that take into account additional considerations;

(B) Any investment advice takes into account investment management and other fees and expenses attendant to the recommended investments;

(C) Any investment advice takes into account, to the extent furnished by a plan, participant or beneficiary, information relating to age, time horizons (e.g., life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences of the participant or beneficiary. A fiduciary adviser shall request such information, but nothing in this paragraph (b)(3)(i)(C) shall require that any investment advice take into account information requested, but not furnished by a participant or beneficiary, nor preclude requesting and taking into account additional information that a plan or participant or beneficiary may provide;

(D) No fiduciary adviser (including any employee, agent, or registered representative) that provides investment advice receives from any party (including an affiliate of the fiduciary adviser), directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that is based in whole or in part on a participant's or beneficiary's selection of an investment option; and

(ii) The requirements of paragraphs (b)(5), (6), (7), and (8) and paragraph (d) of this section are met.

(4) *Arrangements that use computer models.* For purposes of this section, an arrangement is an eligible investment advice arrangement if the only investment advice provided under the arrangement is advice that is generated by a computer model described in paragraphs (b)(4)(i) and (ii) of this section under an investment advice program and with respect to which the requirements of paragraphs (b)(5), (6), (7), and (8) and paragraph (d) are met.

(i) A computer model shall be designed and operated to—

(A) Apply generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time, although nothing herein shall preclude a computer model from applying generally accepted investment theories that take into account additional considerations;

(B) Take into account investment management and other fees and expenses attendant to the recommended investments;

(C) Request from a participant or beneficiary and, to the extent furnished, utilize information relating to age, time horizons (e.g., life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences; provided, however, that nothing herein shall preclude a computer model from requesting and taking into account additional information that a plan or a participant or beneficiary may provide;

(D) Utilize appropriate objective criteria to provide asset allocation portfolios comprised of investment options available under the plan;

(E) Avoid investment recommendations that:

(*1*) Inappropriately favor investment options offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser over other investment options, if any, available under the plan;

(*2*) Inappropriately favor investment options that may generate greater income for the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser; or

(*3*) Inappropriately distinguish among investment options within a single asset class on the basis of a factor that cannot confidently be expected to persist in the future; and

(F)(*1*) Except as provided in paragraph (b)(4)(i)(F)*(2)* of this section, take into account all designated investment options, within the meaning of paragraph (c)(1) of this section, available under the plan without giving inappropriate weight to any investment option.

(*2*) A computer model shall not be treated as failing to meet the requirements of this paragraph merely because it does not make recommendations relating to the acquisition, holding or sale of an investment option that:

(*i*) Constitutes an investment primarily in qualifying employer securities;

(*ii*) Constitutes an investment fund, product or service that allocates the invested assets of a participant or beneficiary to achieve varying degrees of long-term appreciation and capital preservation through equity and fixed income exposures, based on a defined time horizon (such as retirement age or life expectancy) or level of risk of the participant or beneficiary, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such funds, products or services and how they operate; or

(*iii*) Constitutes an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement

income payments guaranteed by an insurance company, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such options and how they operate.

(ii) Prior to utilization of the computer model, the fiduciary adviser shall obtain a written certification, meeting the requirements of paragraph (b)(4)(iv) of this section, from an eligible investment expert, within the meaning of paragraph (b)(4)(iii) of this section, that the computer model meets the requirements of paragraph (b)(4)(i) of this section. If, following certification, a computer model is modified in a manner that may affect its ability to meet the requirements of paragraph (b)(4)(i), the fiduciary adviser shall, prior to utilization of the modified model, obtain a new certification from an eligible investment expert that the computer model, as modified, meets the requirements of paragraph (b)(4)(i).

(iii) The term "eligible investment expert" means a person that, through employees or otherwise, has the appropriate technical training or experience and proficiency to analyze, determine and certify, in a manner consistent with paragraph (b)(4)(iv) of this section, whether a computer model meets the requirements of paragraph (b)(4)(i) of this section; except that the term "eligible investment expert" does not include any person that has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing.

(iv) A certification by an eligible investment expert shall—

(A) Be in writing;

(B) Contain—

(*1*) An identification of the methodology or methodologies applied in determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*2*) An explanation of how the applied methodology or methodologies demonstrated that the computer model met the requirements of paragraph (b)(4)(i) of this section;

(*3*) A description of any limitations that were imposed by any person on the eligible investment expert's selection or application of methodologies for determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*4*) A representation that the methodology or methodologies were applied by a person or persons with the educational background, technical training or experience necessary to analyze and determine whether the computer model meets the requirements of paragraph (b)(4)(i); and

(*5*) A statement certifying that the eligible investment expert has determined that the computer model meets the requirements of paragraph (b)(4)(i) of this section; and

(C) Be signed by the eligible investment expert.

(v) The selection of an eligible investment expert as required by this section is a fiduciary act governed by section 404(a)(1) of ERISA.

(5) *Arrangement must be authorized by a plan fiduciary.* (i) Except as provided in paragraph (b)(5)(ii), the arrangement pursuant to which investment advice is provided to participants and beneficiaries pursuant to this section must be expressly authorized by a plan fiduciary (or, in the case of an Individual Retirement Account (IRA), the IRA beneficiary) other than: the person offering the arrangement; any person providing designated investment options under the plan; or any affiliate of either. Provided, however, that for purposes of the preceding, in the case of an IRA, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person.

(ii) In the case of an arrangement pursuant to which investment advice is provided to participants and beneficiaries of a plan sponsored by the person offering the arrangement or a plan sponsored by an affiliate of such person, the authorization described in paragraph (b)(5)(i) may be provided by the plan sponsor of such plan, provided that the person or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business.

(iii) For purposes of the authorization described in paragraph (b)(5)(i), a plan sponsor shall not be treated as a person providing a designated investment option under the plan merely because one of the designated investment options of the plan is an option that permits investment in securities of the plan sponsor or an affiliate.

(6) *Annual audit.* (i) The fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the fiduciary adviser, to:

(A) Conduct an audit of the investment advice arrangements for compliance with the requirements of this section; and

(B) Within 60 days following completion of the audit, issue a written report to the fiduciary adviser and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the use of the investment advice arrangement, in accordance with paragraph (b)(5) of this section, setting forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of this section.

(ii) With respect to an arrangement with an IRA, the fiduciary adviser:

(A) Within 30 days following receipt of the report from the auditor, as described in paragraph (b)(6)(i)(B) of this section, shall furnish a copy of the report to the IRA beneficiary or make such report available on its website, provided that such beneficiaries are provided information, with the information required to be disclosed pursuant to paragraph (b)(7) of this section, concerning the purpose of the report, and how and where to locate the report applicable to their account; and

(B) In the event that the report of the auditor identifies noncompliance with the requirements of this section, within 30 days following receipt of the report from the auditor, shall send a copy of the report to the Department of Labor at the following address: Investment Advice Exemption Notification, U.S. Department of Labor, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave., NW., Washington, DC, 20210.

(iii) For purposes of this paragraph (b)(6), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or with any designated investment options under the plan.

(iv) For purposes of this paragraph (b)(6), the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with this section. Nothing in this paragraph shall preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period.

(v) The selection of an auditor for purposes of this paragraph (b)(6) is a fiduciary act governed by section 404(a)(1) of ERISA.

(7) *Disclosure.* (i) The fiduciary adviser must provide, without charge, to a participant or a beneficiary before the initial provision of investment advice with regard to any security or other property offered as an investment option, a written notification of:

(A) The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the investment advice program, and in the selection of investment options available under the plan;

(B) The past performance and historical rates of return of the designated investment options available under the plan, to the extent that such information is not otherwise provided;

(C) All fees or other compensation that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with—

(*1*) The provision of the advice;

(*2*) The sale, acquisition, or holding of any security or other property pursuant to such advice; or

(*3*) Any rollover or other distribution of plan assets or the investment of distributed assets in any security or other property pursuant to such advice;

(D) Any material affiliation or material contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property;

(E) The manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed;

(F) The types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser, including, with respect to a computer model arrangement referred to in paragraph (b)(4) of this section, any limitations on the ability of a computer model to take into account an investment primarily in qualifying employer securities;

(G) The adviser is acting as a fiduciary of the plan in connection with the provision of the advice; and

(H) That a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property.

(ii)(A) The notification required under paragraph (b)(7)(i) of this section must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and must be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(B) The appendix to this section contains a model disclosure form that may be used to provide notification of the information described in paragraph (b)(7)(i)(C) of this section. Use of the model form is not mandatory. However, use of an appropriately completed model disclosure form will be deemed to satisfy the requirements of paragraphs (b)(7)(i) and (ii) of this section with respect to such information.

(iii) The notification required under paragraph (b)(7)(i) of this section may, in accordance with 29 CFR 2520.104b–1, be provided in written or electronic form.

(iv) With respect to the information required to be disclosed pursuant to paragraph (b)(7)(i) of this section, the fiduciary adviser shall, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement—

(A) Maintain accurate, up-to-date information in a form that is consistent with paragraph (b)(7)(ii) of this section,

(B) Provide, without charge, accurate, up-to-date information to the recipient of the advice no less frequently than annually,

(C) Provide, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(D) Provide, without charge, to the recipient of the advice any material change to the information described in paragraph (b)(7)(i) at a time reasonably contemporaneous to the change in information.

(8) *Other Conditions.* The requirements of this paragraph are met if—

(i) The fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) Any sale, acquisition, or holding of a security or other property occurs solely at the direction of the recipient of the advice,

(iii) The compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) The terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(c) Definitions. For purposes of this section:

(1) The term "*designated investment option*" means any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term "designated investment option" shall not include "brokerage windows," "self-directed brokerage accounts," or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

(2)(i) The term "*fiduciary adviser*" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) of ERISA by the person to the participant or beneficiary of the plan and who is—

(A) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(B) A bank or similar financial institution referred to in section 408(b)(4) of ERISA or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(C) An insurance company qualified to do business under the laws of a State,

(D) A person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*),

(E) An affiliate of a person described in paragraphs (c)(2)(i)(A) through (D), or

(F) An employee, agent, or registered representative of a person described in paragraphs (c)(2)(i)(A) through (E) of this section who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of advice.

(ii) Except as provided under 29 CFR 2550.408g–2, a fiduciary adviser includes any person who develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of paragraph (b)(4) of this section.

(3) A "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the

investment adviser referred to in such section).

(4) "Individual Retirement Account" or "*IRA*" means—

(i) An individual retirement account described in section 408(a) of the Code;

(ii) An individual retirement annuity described in section 408(b) of the Code;

(iii) An Archer MSA described in section 220(d) of the Code;

(iv) A health savings account described in section 223(d) of the Code;

(v) A Coverdell education savings account described in section 530 of the Code; or

(vi) A trust, plan, account, or annuity which, at any time, has been determined by the Secretary of the Treasury to be described in any of paragraphs (c)(4)(i) through (v) of this section.

(5) An "*affiliate*" of another person means—

(i) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(ii) Any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

(iii) Any person directly or indirectly controlling, controlled by, or under common control with, such other person; and

(iv) Any officer, director, partner, copartner, or employee of such other person.

(6)(i) A person with a "*material affiliation*" with another person means—

(A) Any affiliate of the other person;

(B) Any person directly or indirectly owning, controlling, or holding, 5 percent or more of the interests of such other person; and

(C) Any person 5 percent or more of whose interests are directly or indirectly owned, controlled, or held, by such other person.

(ii) For purposes of paragraph (c)(6)(i) of this section, "interest" means with respect to an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

(7) Persons have a "material contractual relationship" if payments made by one person to the other person pursuant to contracts or agreements between the persons exceed 10 percent of the gross revenue, on an annual basis, of such other person.

(8) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Retention of records. The fiduciary adviser must maintain, for a period of not less than 6 years after the provision of investment advice under this section any records necessary for determining whether the applicable requirements of this section have been met. A transaction prohibited under section 406 of ERISA shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(e) Noncompliance. (1) The relief from the prohibited transaction provisions of section 406 of ERISA and the sanctions resulting from the application of section 4975 of the Code described in paragraph (b) of this section shall not apply to any transaction described in such paragraphs in connection with the provision of investment advice to an individual participant or beneficiary with respect to which the applicable conditions of this section have not been satisfied.

(2) In the case of a pattern or practice of noncompliance with any of the applicable conditions of this section, the relief described in paragraph (b) shall not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended.

(f) Effective date and applicability date. This section shall be effective [ENTER DATE 60 DAYS AFTER THE DATE OF PUBICATION OF THE FINAL RULE]. This section shall apply to transactions described in paragraph (b) of this section occurring on or after [ENTER DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

Appendix to § 2550.408g–1

Fiduciary Adviser Disclosure

This document contains important information about [enter name of Fiduciary Adviser] and how it is compensated for the investment advice provided to you. You should carefully consider this information in your evaluation of that advice.

[enter name of Fiduciary Adviser] has been selected to provide investment advisory services for the [enter name of Plan]. [enter name of Fiduciary Adviser] will be providing these services as a fiduciary under the Employee Retirement Income Security Act (ERISA). [enter name of Fiduciary Adviser], therefore, must act prudently and with only your interest in mind when providing you recommendations on how to invest your retirement assets.

Compensation of the Fiduciary Adviser and Related Parties

[enter name of Fiduciary Adviser] (is/is not) compensated by the plan for the advice it provides. (if compensated by the plan, explain what and how compensation is charged (e.g., asset-based fee, flat fee, per advice)). (If applicable, [enter name of Fiduciary Adviser] is not compensated on the basis of the investment(s) selected by you.)

Affiliates of [enter name of Fiduciary Adviser] (if applicable enter, and other parties with whom [enter name of Fiduciary Adviser] is related or has a material financial relationship) also will be providing services for which they will be compensated. These services include: [enter description of services, e.g., investment management, transfer agent, custodial, and shareholder services for some/all the investment funds available under the plan.]

When [enter name of Fiduciary Adviser] recommends that you invest your assets in an investment fund of its own or one of its affiliates and you follow that advice, [enter name of Fiduciary Adviser] or that affiliate will receive compensation from the investment fund based on the amount you invest. The amounts that will be paid by you will vary depending on the particular fund in which you invest your assets and may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is available from [enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser] also receive compensation from non-affiliated investment funds as a result of investments you make as a result of recommendations of [enter name of Fiduciary Adviser]. The amount of this compensation also may vary depending on the particular fund in which you invest. This compensation may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is available from [enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, In addition to the above, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser] also receive other fees or compensation, such as commissions, in connection with the sale, acquisition or holding of investments selected by you as a result of recommendations of [enter name of Fiduciary Adviser]. These amounts are: [enter description of all other fees or compensation to be received in connection with sale, acquisition or holding of investments]. This information should be reviewed carefully before you make an investment decision.

(if applicable enter, When [enter name of Fiduciary Adviser] recommends that you

take a rollover or other distribution of assets from the plan, or recommends how those assets should subsequently be invested, [enter name of Fiduciary Adviser] or affiliates of [enter name of Fiduciary Adviser] will receive additional fees or compensation. These amounts are: [enter description of all other fees or compensation to be received in connection with any rollover or other distribution of plan assets or the investment of distributed assets]. This information should be reviewed carefully before you make a decision to take a distribution.

Consider Impact of Compensation on Advice

The fees and other compensation that [enter name of Fiduciary Adviser] and its affiliates receive on account of assets in [enter name of Fiduciary Adviser] (enter if applicable, and non-[enter name of Fiduciary Adviser]) investment funds are a significant source of revenue for the [enter name of Fiduciary Adviser] and its affiliates. You should carefully consider the impact of any such fees and compensation in your evaluation of the investment advice that [enter name of Fiduciary Adviser] provides to you. In this regard, you may arrange for the provision of advice by another adviser that may have no material affiliation with or receive no compensation in connection with the investment funds or products offered under the plan. This type of advice is/is not available through your plan.

Investment Returns

While understanding investment-related fees and expenses is important in making informed investment decisions, it is also important to consider additional information about your investment options, such as performance, investment strategies and risks. Specific information related to the past performance and historical rates of return of the investment options available under the plan (has/has not) been provided to you by [enter source, such as: your plan administrator, investment fund provider]. (if applicable enter, If not provided to you, the information is attached to this document.)

For options with returns that vary over time, past performance does not guarantee how your investment in the option will perform in the future; your investment in these options could lose money.

Parties Participating in Development of Advice Program or Selection of Investment Options

Name, and describe role of, affiliates or other parties with whom the fiduciary adviser has a material affiliation or contractual relationship that participated in the development of the investment advice program (if this is an arrangement that uses computer models) or the selection of investment options available under the plan.

Use of Personal Information

Include a brief explanation of the following—

What personal information will be collected;
How the information will be used;
Parties with whom information will be shared;
How the information will be protected; and
When and how notice of the Fiduciary Adviser's privacy statement will be available to participants and beneficiaries.

Should you have any questions about [enter name of Fiduciary Adviser] or the information contained in this document, you may contact [enter name of contact person for fiduciary adviser, telephone number, address].

3. Add § 2550.408g–2 to read as follows:

§ 2550.408g–2 Investment advice—fiduciary election.

(a) General. Section 408(g)(11)(A) of the Employee Retirement Income Security Act, as amended (ERISA), provides that a person who develops a computer model or who markets a computer model or investment advice program used in an "eligible investment advice arrangement" shall be treated as a fiduciary of a plan by reason of the provision of investment advice referred to in ERISA section 3(21)(A)(ii) to the plan participant or beneficiary, and shall be treated as a "fiduciary adviser" for purposes of ERISA sections 408(b)(14) and 408(g), except that the Secretary of Labor may prescribe rules under which only one fiduciary adviser may elect to be treated as a fiduciary with respect to the plan. Section 4975(f)(8)(J)(i) of the Internal Revenue Code, as amended (the Code), contains a parallel provision to ERISA section 408(g)(11)(A) that applies for purposes of Code sections 4975(d)(17) and 4975(f)(8). This section sets forth requirements that must be satisfied in order for one such fiduciary adviser to elect to be treated as a fiduciary with respect to a plan under an eligible investment advice arrangement.

(b)(1) If an election meets the requirements in paragraph (b)(2) of this section, then the person identified in the election shall be the sole fiduciary adviser treated as a fiduciary by reason of developing or marketing the computer model, or marketing the investment advice program, used in an eligible investment advice arrangement.

(2) An election satisfies the requirements of this subparagraph with respect to an eligible investment advice arrangement if the election is in writing and such writing —

(i) Identifies the investment advice arrangement, and the person offering the arrangement, with respect to which the election is to be effective;

(ii) Identifies a person who—

(A) Is described in any of 29 CFR 2550.408g–1(c)(2)(i)(A) through (E),

(B) Develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of 29 CFR 2550.408g–1(b)(4) with respect to the arrangement, and

(C) Acknowledges that it elects to be treated as the only fiduciary, and fiduciary adviser, by reason of developing such computer model, or marketing such computer model or investment advice program;

(iii) Is signed by the person identified in paragraph (b)(2)(ii) of this section;

(iv) Is furnished to the fiduciary who authorized the arrangement, in accordance with 29 CFR 2550.408g–1(b)(5); and

(v) Is maintained in accordance with 29 CFR 2550.408g–1(d).

Signed at Washington, DC, this 24th day of February 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–4196 Filed 2–26–10; 11:15 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1132]

RIN 1625–AA00

Safety Zone; AVI May Fireworks Display, Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone, on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before April 1, 2010. Requests for public meetings must be received by the Coast Guard on or before March 23, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–1132 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of

Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–1132), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–1132" in the "Keyword" box. 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 that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–1132" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of the Lower Colorado River in support of a fireworks show near Laughlin, NV. The fireworks show is being sponsored by AVI Resort and Casino. We propose the safety zone be set at an 800 foot radius around the firing site. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 8 p.m. to 9:45 p.m. on May 30, 2010. The limits of the safety zone would include all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″ N, 114°38′28″ W.

This proposed safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel would enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Vessels or persons violating this rule would be subject to both criminal and civil penalties.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although the safety zone will restrict boating traffic within the navigable waters of the Lower Colorado River, Laughlin, NV, the effect of this regulation will not be significant as the safety zone will encompass only a portion of the waterway and will be

very short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the region of the lower Colorado River adjacent to AVI Resort and Casino from 8 p.m. to 9:45 p.m. on May 30, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a portion of the waterway; it is short in duration at a relatively late hour when commercial traffic is low; and the Captain of the Port may authorize entry into the zone, if necessary. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VFH before the safety zone is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, at (619) 278–7262 . The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 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 do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone and is categorically excluded under figure 2–1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T11–284 to read as follows:

§ 165.T11–284 Safety Zone, AVI May Fireworks Display, Colorado River, Laughlin, NV.

(a) *Location.* The limits of the safety zone are as follows: All navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″N, 114°38′28″W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on May 30, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

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

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

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

Dated: February 3, 2010.

T.H. Farris,

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

[FR Doc. 2010–4204 Filed 3–1–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0131, FRL–9120–9]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 235, "Consumer Products" and Part 239, "Portable Fuel Container Spillage Control." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone.

DATES: Comments must be received on or before *April 1, 2010.*

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2010–0131, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2010–0131. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is

not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What is Required by the Clean Air Act (Act) and How Does it Apply to New York?

A. What Is the History and Time Frame for State Implementation Plan (SIP) Submissions?

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma. On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are: the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist States in meeting the Act's requirements for ozone, EPA released an 8-hour ozone implementation rule in two Phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that States must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.[1]

B. What Are the Moderate Area Requirements?

On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612) and referred to as the Phase 2 Rule, which addressed the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), and (c)).

In a related matter, the Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by States in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

II. What Was Included in New York's Submittals?

On October 21, 2009 and November 23, 2009, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP which included State adopted revisions to two regulations which consist of, respectively, Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 235, "Consumer Products" with an effective date of October 15, 2009 and 6 NYCRR Part 239, "Portable Fuel Container Spillage Control" with an effective date of July 30, 2009. These revisions will provide volatile organic compound (VOC) emission reductions to address, in part, attainment of the 1997 8-hour ozone standard in the NYMA and towards meeting the RACT and RACM requirement. New York used the OTC model rules as guidelines to develop its rules.

A. What Do the Revisions to Part 235, "Consumer Products" Consist Of?

On January 23, 2004 (69 FR 3237), EPA approved the previous version of Part 235 that included VOC content limits for 43 separate consumer product categories. New York's recent revisions to Part 235 includes VOC content limits for eleven new categories of products and includes revised VOC content limits for contact adhesives. The new categories of products, some of which include subcategories, are: adhesive remover, anti-static (non-aerosol), electrical cleaner, electronic cleaner, fabric refresher, footwear or leather care,

[1] On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

graffiti remover, hair styling, shaving gel, toilet/urinal care, and wood cleaner.

New York also revised subpart 235–2.1, "Definitions" to accommodate the new and revised categories as well as to provide clarification on some existing definitions.

Revised subpart 235–3.1, "Standards" establishes that no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York consumer products manufactured on or after January 1, 2010 which contain VOC's in excess of the VOC content limits specified by New York State for the eleven new and revised categories. The VOC standards for products registered under FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) will have an effective date of January 1, 2011.

The revisions to subpart 235–3.1 include an unlimited sell through for products that are manufactured before January 1, 2010, except for products that do not display on the container or package the date, or a code indicating the date, on which the product was manufactured (*see* subpart 235–3.1(d)); solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene (*see* subpart 235–3.1(d) and (n)); adhesive removers, contact adhesives, electrical cleaners, electronic cleaners, footwear or leather care products, graffiti removers and general purpose degreasers (a category already included in the SIP) that contain methylene chloride, perchloroethylene; or trichloroethylene (*see* subpart 235–3.1(l) and (m)). Products containing these compounds will have a one year limited sell through until January 1, 2011. Other revisions to Part 235 include some administrative changes to the labeling/date coding provisions (subpart 235–6.1), an innovative products exemption (subpart 235–5.1), a variance provision (subpart 235–8.1), alternative test methods (subpart 235–9.1) and alternate control plan provisions (subpart 235–11). Subparts 235–5.1, 235–8.1, 235–9.1 and 235–11.1 require that after NYSDEC approves an application for an innovative product exemption, a variance, an alternative test method or alternative control plan, it must be submitted to the EPA for approval as a SIP revision. In the event that the State adopts a less stringent requirement and it is not approved into the SIP by EPA through a source-specific SIP mechanism, the rule in the SIP is operative under Federal law and is Federally enforceable.

B. What do the Requirements of Part 239, "*Portable Fuel Container Spillage Control*" *Consist Of?*

On January 23, 2004 (69 FR 3237), EPA approved the previous version of Part 239 that is intended to reduce refueling emissions from equipment and engines in the off-road categories that are predominantly refueled with portable fuel containers. New York's recent revisions to Part 239 make certain provisions (*i.e.,* applicability, performance standards, exemptions, test procedures and administrative procedures) consistent with Federal Rule, 40 CFR Part 59 Subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers. Pursuant to Sections 110(l) and 193 of the Act, EPA is not authorized to approve a revision to the SIP unless the modification insures equivalent or greater emission reductions and the revision would not interfere with an applicable requirement concerning attainment and reasonable further progress as defined in title I of the Act or any other applicable requirement of the Act.

In the event that the State adopts a less stringent rule and it is not approved into the SIP by EPA through a source-specific SIP mechanism, the rule in the SIP is operative under Federal law and is Federally enforceable. Part 239 also differs from 40 CFR Part 59 Subpart F in that it establishes innovative product exemption provisions that allow for alternatives to complying with the performance standards specified in Part 239. If a manufacturer demonstrates by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category, the manufacturer may apply to the NYSDEC for an innovative product exemption in accordance with the criteria specified in Part 239–5.

In addition, subpart 239–7 provides procedures for obtaining a variance. Any person who cannot comply with the performance standards set forth in Part 239, due to extraordinary reasons that are beyond that person's reasonable control, may apply in writing to the NYSDEC for a variance. An application for a variance must specify the grounds upon which the variance is sought, the proposed date(s) by which compliance with the Part 239 VOC limits will be achieved and a compliance report reasonably detailing the method(s) by which compliance will be achieved.

III. What is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to Part 235 and Part 239 of Title 6 of the New York Codes, Rules and Regulations, entitled, "Consumer Products" and "Portable Fuel Container Spillage Control", respectively, meet the SIP revision requirements of the Act with the following exceptions.

The provisions related to innovative products exemptions in subpart 239–5, variances in subpart 239–7 and alternate test methods in subpart 239–8 do not explicitly require submission of an innovative product exemption, variance or alternative test method to EPA for approval into the SIP. Since the rule does not explicitly state that innovative product exemptions, variances or alternative test methods have to be submitted to EPA for approval in the SIP, there is the possibility that such exemptions, variances and alternatives will not be submitted for review and approval into the SIP and therefore will not, if approved, become Federally enforceable. Failure to submit such exemptions, variances or alternatives to EPA for review and approval can lead to sources not understanding that the original rule still applies and can be enforced by the United States. In order to be Federally enforceable, any exemption, variance or alternative test method approved by NYSDEC must be approved by EPA into the SIP.

While Part 239 may create some uncertainty regarding which provisions in subpart 239–5, 239–7 or 239–8 are enforceable, EPA has determined that there is no certainty that sources will use these provisions in the future. Therefore, EPA is proposing to approve the proposed revisions to Part 239 as part of the New York SIP with the understanding that the specific application of provisions associated with innovative product exemptions, variances, and alternate test methods, pursuant to Part 239, must be submitted to EPA as SIP revisions.

IV. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 18, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–4306 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2004–19608]

RIN 2126–AB26

Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will hold a fifth public listening session (in addition to the four sessions held in January 2010) to solicit comments and information on potential hours-of-service (HOS) regulations. Specifically, the Agency wants to know what factors, issues, and data it should be aware of as it prepares to issue a notice of proposed rulemaking (NPRM) on HOS requirements for property-carrying commercial motor vehicle (CMV) drivers. This session will be held in the Louisville, Kentucky area in conjunction with the Mid-America Trucking Show. The listening session will allow interested persons to present comments, views, and relevant research on revisions FMCSA should consider in its forthcoming rulemaking. All comments will be transcribed and placed in the rulemaking docket for the FMCSA's consideration.

DATES: This listening session will be held on Friday, March 26, 2010, in Louisville, Kentucky. It will begin at 10 a.m. local time and end at 6 p.m., or earlier, if all participants wishing to express their views have done so.

ADDRESSES: The listening session will be held at the Mid-America Trucking Show at the Kentucky Exposition Center, South Wing Room B101, 937 Phillips Lane, Louisville, Kentucky 40209–1331. The Kentucky Exposition Center may be contacted at (502) 367–5000 for directions. Each person attending may attend the trucking show and the listening session free of charge, if they pre-register online with the Mid-America Trucking Show organizer at *http://truckingshow.com/attendee/attendee-registration.* Attendees pre-registering must print out their confirmation page after registering and present it at the Kentucky Exposition Center door to be admitted free. Otherwise, admission to the trucking show on March 26 will be $5.00.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2004–19608 using any of the following methods.

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

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

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: For information concerning the hours-of-service rules, contact Mr. Tom Yager, Chief, Driver and Carrier Operations

Division, (202) 366–4325, *mcpsd@dot.gov.*

For sign language interpretation services, contact the Regulatory Development Division at (202) 366–5370 or *FMCSAregs@dot.gov*, by March 17, 2010, to allow us to arrange for such services. There is no guarantee that interpreter services requested on short notice can be provided.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2009, Public Citizen, *et al.* (Petitioners) and FMCSA entered into a settlement agreement under which the parties agreed to seek to hold Petitioners' petition for judicial review of the November 19, 2008 Final Rule on drivers' hours of service in abeyance pending the publication of an NPRM. The settlement agreement states that FMCSA will submit the draft NPRM to the Office of Management and Budget (OMB) within nine months, and publish a Final Rule within 21 months, of the date of the settlement agreement. The current rule will remain in effect during the rulemaking proceedings.

On January 5, 2010, FMCSA announced its plans to hold three public listening sessions concerning the HOS rulemaking (75 FR 285). On January 15, 2010, FMCSA announced its plans to hold a fourth public listening session (75 FR 2467). FMCSA now announces a fifth public listening session to solicit additional written and/or oral comments and information on potential revisions to the HOS rule. The Agency will provide further opportunity for public comment when the NPRM is published.

II. Meeting Participation

This listening session is open to the public. Speakers' remarks will be limited to 10 minutes each. The public may submit material to the FMCSA staff at each session for inclusion in the public docket, FMCSA–2004–19608.

III. Questions for Discussion During the Listening Sessions

In preparing their comments, meeting participants should consider the following questions about possible alternatives to the current HOS requirements. These scenarios are merely set forth for discussion; FMCSA will not necessarily include them in an NPRM but would request similar information and data in an NPRM. Answers to these questions should be based upon the experience of the participants and any data or information they can share with FMCSA.

A. Rest and On-Duty Time

1. Would mandatory short rest periods during the work day improve driver alertness in the operation of a CMV? How long should these rest periods be? At what point in the duty cycle or drive-time would short rest periods provide the greatest benefit? What are the unintended consequences if these short rest periods are mandatory? Should the on-duty period be extended to allow for mandatory rest periods?

2. If rest or other breaks from driving improve alertness, could a driver who chooses to take specified minimum breaks be given scheduling flexibility—the ability to borrow an hour from another driving day once a week, for example—if that flexibility would not increase safety risks or adversely impact driver health?

3. How many hours per day and per week would be safe and healthy for a truck driver to work?

4. Would an hours-of-service rule that allows drivers to drive an hour less when driving overnight improve driver alertness and improve safety? Are there any adverse consequences that could arise from the implementation of a separate nighttime hours-of-service regulation?

B. Restart to the 60- and 70-Hour Rule

1. Is a 34-consecutive-hour off-duty period long enough to provide restorative sleep regardless of the number of hours worked prior to the restart? Is the answer different for a driver working a night or irregular schedule?

2. What would be the impact of mandating two overnight off-duty periods, e.g., from midnight to 6 a.m., as a component of a restart period? Would such a rule present additional enforcement challenges?

3. How is the current restart provision being used by drivers? Do drivers restart their calculations after 34 consecutive hours or do drivers take longer periods of time for the restart?

C. Sleeper Berth Use

1. If sleeper-berth time were split into two periods, what is the minimum time in each period necessary to provide restorative sleep?

2. Could the 14-hour on-duty limitation be extended by the amount of some additional sleeper-berth time without detrimental effect on highway safety? What would be the appropriate length of such a limited sleeper-berth rest period?

D. Loading and Unloading Time

1. What effect has the fixed 14-hour driving "window" had on the time drivers spend waiting to load or unload? Have shippers and receivers changed their practices to reduce the amount of time drivers spend waiting to load or unload?

E. General

1. Are there aspects of the current rule that do not increase safety risks or adversely impact driver health and that should be preserved?

Issued on: February 24, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4293 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0008]
[MO 92210-0-0008-B2]

[RIN 1018-AX07]

Endangered and Threatened Wildlife and Plants; Listing the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reinstatement of proposed rule, reopening of comment period, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public of the reinstatement of our November 29, 1993, proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of a public comment period on the 1993 proposed rule and the scheduling of public hearings. This action will provide all interested parties with an additional opportunity to provide information and submit comments on the 1993 proposed rule.

DATES: *Written comments:* To ensure consideration of your comments, we must receive them on or before May 3, 2010.

Public Hearings: The public hearings will take place on March 23, 2010, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at University of California, Riverside (UCR) Palm Desert Graduate Center, 75-080 Frank Sinatra Drive,

Palm Desert, CA, and on March 24, 2010, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at the Radisson Hotel Yuma, 1501 South Redondo Center Drive, Yuma, AZ.

ADDRESSES: *Written comments:* You may submit comments and information by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS–R8–ES–2010–0008 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS–R8–ES–2010–0008; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Public Hearings: The public hearings will be held at the University of California, Riverside (UCR) Palm Desert Graduate Center, 75-080 Frank Sinatra Drive, Palm Desert, CA 92211, and at the Radisson Hotel Yuma, 1501 South Redondo Center Drive, Yuma, AZ 85365.

We will post all comments and information we receive in writing and oral testimony offered at the public hearings on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

This document announces the reinstatement of the 1993 proposed rule, published in the **Federal Register** on November 29, 1993 (58 FR 62624), to list the flat-tailed horned lizard as a threatened species, and reopens the public comment period on this reinstated rulemaking. We intend any final action resulting from this proposal to be as accurate as possible. To ensure our determination is based on the best available scientific and commercial information, we request information on the flat-tailed horned lizard from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We particularly seek information on:

(1) The species' biology, range, and population trends.

(2) Past and ongoing conservation measures for the species, its habitat, or both, including how implementation of the Flat-tailed Horned Lizard Rangewide Management Strategy has affected the species in the United States.

(3) Conservation measures for the species in Mexico.

(4) The factors that are the basis for making a listing, delisting, or downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(5) The taxonomic status of this species, or whether any population segments of the flat-tailed horned lizard are discrete or significant under our February 7, 1996, policy regarding the recognition of distinct vertebrate population segments (61 FR 4722).

(6) The potential effects global climate change may have on the flat-tailed horned lizard or its habitat.

You may submit your information concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing previous listing determinations for the species, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). If you submitted comments or information previously on the proposed rule or during any of the previous open comment periods related to this proposed rule, please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

Public Hearings

We have scheduled two public hearings on the proposed rule. They will be held on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section.

Anyone wishing to make an oral statement at a public hearing for the record is encouraged to provide a written copy of their statement to us at that hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up only at the hearings. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing or need reasonable accommodations to attend and participate in the public hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 1 week before the hearing date, to allow sufficient time to process requests.

Previous Federal Actions

On November 29, 1993, we published in the **Federal Register** a proposed rule to list the flat-tailed horned lizard as a threatened species under the Act (58 FR 62624). On July 15, 1997, we published in the **Federal Register** a final determination to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852) based on various considerations including a reduction of threats to the species on public land and the existence of the Flat-tailed Horned Lizard Rangewide Management Strategy.

The Defenders of Wildlife filed a complaint in the U.S. District Court for the Southern District of California challenging our 1997 withdrawal of the proposed rule. On June 16, 1999, the District Court upheld our decision to withdraw the proposed listing rule. The District Court's decision was appealed and on July 31, 2001, and the Ninth Circuit Court of Appeals vacated the previous ruling of the District Court. In accordance with the Appeals Court's ruling, we published a document in the **Federal Register** on December 26, 2001, reinstating the 1993 proposed rule and opening a 120–day public comment period (66 FR 66384).

Subsequently, we reopened the comment period on the 1993 proposed rule twice, once on May 30, 2002 (67 FR 37752) and again on September 24, 2002 (67 FR 59809).

On January 3, 2003, we again published in the **Federal Register** a decision to withdraw the November 29, 1993, proposed rule to list the flat-tailed horned lizard as a threatened species (68 FR 331). The Service found the lizard to be in danger of extirpation in the Coachella Valley; however, we determined that the Coachella Valley is not a significant portion of the species' range. We concluded in the January 3, 2003, withdrawal that the flat-tailed horned lizard populations on either side of the Imperial Valley/Salton Sea and in Arizona were not likely to become endangered in the foreseeable future and that listing the species was not warranted.

The Tucson Herpetological Society and others filed a complaint with the District Court for the District of Arizona challenging the January 3, 2003, withdrawal of the proposed rule. In a ruling issued on August 30, 2005, the District Court for the District of Arizona issued an order granting plaintiffs' motion for summary judgment, citing our failure to specifically evaluate the lost habitat of the flat-tailed horned lizard, and whether the amount of lost habitat represented a significant portion of the species' range. On December 7, 2005, we published a document in the **Federal Register** reinstating the 1993 proposed rule (70 FR 72776). On March 2, 2006, we reopened the public comment period on the 1993 proposed rule for the purpose of soliciting comments and information relevant to the specific issue identified in the District Court's November 2005 ruling (i.e., whether the flat-tailed horned lizard's lost historical habitat rendered the species likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range) (71 FR 10631). We reopened an additional public comment period on the 2006 **Federal Register** notice from April 21, 2006, to May 8, 2006 (71 FR 20637).

After re-examining the lost historical habitat of the flat-tailed horned lizard in relation to our January 3, 2003, withdrawal, we determined that the lost historical habitat is not a significant portion of the species' range, and its loss does not result in the species likely becoming endangered in the foreseeable future throughout all or a significant portion of its range. We published our decision to once again withdraw the November 29, 1993, proposed rule to list the flat-tailed horned lizard as a threatened species on June 28, 2006 (71 FR 36745).

Following a supplemental complaint from Tucson Herpetological Society and others challenging the 2006 withdrawal of the proposed rule to list the flat-tailed horned lizard under the Act, the United States District Court for the District of Arizona (the District Court) granted summary judgment in favor of the Secretary of the Interior; however, this ruling was appealed to the Court of Appeals for the Ninth Circuit. In a ruling issued on May 18, 2009, the Court of Appeals for the Ninth Circuit reversed the District Court's ruling when it determined that in the context of the analysis of whether the lizard's lost historical range constituted a significant portion of the species' range, the administrative record did not support what the Court of Appeals for the Ninth Circuit viewed as the Service's conclusion that flat-tailed horned lizard populations were stable and viable throughout most of its current range.

On November 3, 2009, the District Court remanded the 2006 withdrawal to the Service for further consideration and reinstated the 1993 proposal to list the species. The District Court ordered the Service to complete this reconsideration within 12 months. The Service will complete its review of the best available scientific and commercial information, including information and comments submitted during this comment period, as part of the remand process. We will then complete a new listing determination. This document serves to notify the public of the reinstatement of the 1993 proposed rule, announce public hearings, and solicit information regarding the species and threats to it and its habitat.

You may obtain copies of the original 1993 proposed rule, and other previous Federal actions relating to the flat-tailed horned lizard by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section), or on the Internet at *http://www.fws.gov/Carlsbad*, or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

Author

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 17, 2010.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–4071 Filed 3–1– 10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 75, No. 40

Tuesday, March 2, 2010

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

Commodity Credit Corporation

Cooperative Conservation Partners Initiative; Wetlands Reserve Enhancement Program

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of request for proposals through the Mississippi River Basin Healthy Watersheds Initiative.

SUMMARY: The Chief of the Natural Resources Conservation Service (NRCS), who is Vice President of the Commodity Credit Corporation (CCC), announces the availability of financial assistance funds in fiscal year (FY) 2010 for up to $50 million in the Cooperative Conservation Partnership Initiative (CCPI) and $25 million in the Wetlands Reserve Enhancement Program (WREP) through the Mississippi River Basin Healthy Watersheds Initiative (MRBI) to eligible participants in 12-digit Hydrologic Unit Code (HUC) subwatershed(s) within the 41 designated focus areas (8-digit HUCs) in the following States: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin. The purpose of this notice is to solicit proposals from potential partners to enter into partnership agreements with NRCS, and to inform agricultural producers and landowners of the future availability of program funds through approved partnership projects.

DATES: *Effective Date:* The Notice of Request is effective March 2, 2010.

Eligible partners may submit proposals by mail or via courier.

- By mail, proposals must be postmarked by May 3, 2010.
- By courier, proposals must be delivered by May 3, 2010.

ADDRESSES: Written proposals should be submitted to the addresses identified below, with copies to the appropriate NRCS State Conservationist, whose names and addresses are identified as an attachment to this notice. If a project is multi-State in scope, all State Conservationists in the proposed project area must be sent the proposal for review.

- *By mail:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250. (Note: Registered or Certified Mail to a Post Office may not be used.)
- *By courier:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250, Telephone: (202) 720–1845. All proposals will be accepted between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–1845.

State Conservationists will review and comment on eligible proposals and will share them with their State Technical Committee for input and feedback. Proposals submitted via fax, email, or after the deadline date or times listed in this notice will not be considered. Proposals submitted via the grants.gov Web site will not be considered.

FOR FURTHER INFORMATION CONTACT:

- *CCPI projects:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5241 South Building, Washington, DC 20250; Telephone: (202) 720–1845; Fax: (202) 720–4264; or e-mail: *MRBI–CCPI@wdc.usda.gov.* Additional information regarding CCPI is available at the following NRCS Web page: *http://www.nrcs.usda.gov/programs/CCPI/*
- *WREP projects:* Andree DuVarney, Acting Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250; Telephone: (202) 720–1854; Fax: (202) 720–9689; or e-mail: *MRBI–WREP@wdc.usda.gov.* Additional information regarding WREP is available at the following NRCS Web page: *http://www.nrcs.usda.gov/programs/WRP*
- *Monitoring and Evaluation:* Mike Hubbs, Director, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6158 South Building, Washington, DC 20250; Telephone: (202) 720–5992; Fax: (202) 720–2646; or email: *Mike.Hubbs@wdc.usda.gov*
- *MRBI Information:* Information concerning MRBI can be found at the following Web page: *http://www.nrcs.usda.gov/programs/mrbi/mrbi.html*
- Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Act) requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, U.S.C. Therefore, the Department of Agriculture (USDA) is not reporting recordkeeping or estimated paperwork burden associated with this amendment.

Background

The Mississippi River Basin is a critical ecosystem within the United States. Its entire land mass, totaling 41 percent of the contiguous United States and 15 percent of North America, drains into the Mississippi River and the Gulf of Mexico. Stretching 2,350 miles from its headwaters at Lake Itasca, Minnesota, to the mouth of the Gulf of Mexico, the Mississippi River carries an average of 436,000 tons of sediment each day. Nutrients, like nitrogen and phosphorus, contribute to both local water quality problems and the hypoxic zone in the Gulf of Mexico.

To help solve these water quality problems, NRCS has developed the MRBI. Through this new initiative, NRCS and its partners will help landowners and operators in selected watersheds in the Mississippi River Basin voluntarily implement conservation systems that avoid, control, and trap nutrient runoff; protect, restore, and enhance wetlands; maintain agricultural productivity;

improve wildlife habitat; and achieve other MRBI objectives.

Within the designated focus areas in the Mississippi River Basin, NRCS announces the availability of financial assistance funds in FY 2010 for up $50 million in the CCPI and $25 million in the WREP to eligible participants through approved partnership projects in the following States: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Forty-one focus areas (watersheds) have been selected by NRCS State Conservationists, with input from the State Technical Committees and State water quality agencies, to help improve water quality by reducing nitrogen and phosphorous levels in the Mississippi River Basin. The selected watersheds are listed below. Using CCPI and WREP, NRCS will leverage partner contributions and accelerate conservation assistance to improve water quality; protect, restore, and enhance wetlands; enhance wildlife habitat; and achieve other MRBI objectives. Entities interested in partnering with NRCS in the MRBI must submit separate proposals for CCPI and WREP to the addresses identified in this notice. NRCS will not accept joint CCPI and WREP proposals in FY 2010. Accordingly, an entity is encouraged to submit a proposal for each program. Proposals that integrate CCPI and WREP within a project area will receive higher priority. Entities should note in their applications that proposals have been submitted for both CCPI and WREP, when applicable.

Focus Areas

Eligible partners should submit complete proposals addressing the conservation objectives to be achieved in one or more 12-digit HUC subwatersheds within the designated 8-digit focus area or areas. The designated focus areas listed by 8-digit HUC are below. A complete list of the smaller-scale, 12-digit HUC subwatersheds within the designated 8-digit focus areas can be found at: *http://www.nrcs.usda.gov/programs/mrbi/unit_code_lists.html.*

DESIGNATED FOCUS AREAS FOR THE MRBI FY 2010 (8-DIGIT HUCS)

State(s)	Watershed	Hydrologic unit code
Arkansas/Missouri	Cache	08020302
Arkansas	Lake Conway-Point Remove	11110203
Arkansas	L'Anguille	08020205
Arkansas/Missouri	Lower St. Francis	08020203
Illinois	Lower Illinois-Senachwine Lake	07130001
Illinois	Upper Illinois	07130005
Illinois	Vermillion (Upper Mississippi River sub-basin)	07130002
Illinois/Indiana	Vermillion (Upper Ohio River sub-basin)	05120109
Indiana	Eel	05120104
Indiana	Upper East Fork White	05120206
Indiana	Wildcat	05120107
Indiana/Ohio	Upper Wabash	05120101
Iowa	Boone	07100005
Iowa	Maquoketa	07060006
Iowa	North Raccoon	07100006
Iowa/Minnesota	Upper Cedar	07080201
Kentucky/Tennessee	Bayou De Chien-Mayfield	08010201
Kentucky	Licking	05100101
Kentucky	Lower Green	05110005
Louisiana	Mermentau	08080202
Louisiana/Arkansas	Bayou Macon	08050002
Louisiana/Arkansas	Boeuf River	08050001
Minnesota	Middle Minnesota	07020007
Minnesota	Root	07040008
Minnesota	Sauk	07010202
Mississippi	Big Sunflower	08030207
Mississippi/Louisiana/Arkansas	Deer-Steele	08030209
Mississippi	Upper Yazoo	08030206
Missouri/Iowa	Lower Grand	10280103
Missouri	North Fork Salt	07110005
Missouri	South Fork Salt	07110006
Missouri/Arkansas	Little River Ditches	08020204
Ohio/Indiana	Upper Great Miami	05080001
Ohio	Upper Scioto	05060001
Tennessee	Forked Deer	08010206
Tennessee/Kentucky	Obion	08010202
Tennessee	South Fork Obion	08010203
Tennessee/Kentucky	Red River	05130206
Wisconsin/Illinois	Sugar	07090004
Wisconsin/Illinois	Upper Rock	07090001
Wisconsin/Illinois	Pecatonica	07090003

Submitting Proposals

Potential partners must submit a complete proposal to Gregory K. Johnson, Director, Financial Assistance Programs Division, addressing all questions and items listed in the appropriate subpart of this notice. Potential partners should recognize that the proposal is the only document

NRCS will use in the evaluation process. The proposal must include sufficient detail to allow NRCS to understand the partner's priority resource concerns, objectives, and expected outcomes. Incomplete proposals and those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. Proposal evaluation will be based upon a competitive process and the criteria established under the appropriate CCPI or WREP proposal requirements. Proposals for CCPI and WREP must be submitted separately.

To further explain how each of these watershed-based initiatives work and specify how to submit proposals for CCPI and WREP, NRCS identifies the policies and processes below.

Part A: MRBI–CCPI

Section 2707 of the 2008 Act established the CCPI by amending section 1243 of the Food Security Act of 1985 (16 U.S.C. 3843). The Request for Proposals contains a number of new terms and words which would normally be included in a definitions section. However, in order to reduce content and improve readability of this notice, definitions may be obtained by contacting the persons referenced in the **FOR FURTHER INFORMATION CONTACT** section and online at: *http://www.nrcs.usda.gov/programs/mrbi/mrbi.html* or *http://www.nrcs.usda.gov/programs/ccpi.*

CCPI is a voluntary initiative that uses the funds, policies, and processes of conservation programs under Subtitle D of Title XII of the Food Security Act, specifically the Environmental Quality Incentives Program (EQIP) (7 CFR part 1466), Wildlife Habitat Incentives Program (WHIP) (7 CFR part 636), and Conservation Stewardship Program (CSP) (7 CFR part 1470) to deliver assistance to owners and operators of agricultural and nonindustrial private forest land. CCPI differs from CSP, EQIP, and WHIP in that the initiative is designed specifically to foster coordination with other partners, and to encourage additional non-Federal investment in natural resource conservation through the use of in-kind services or matching funds in a geographic area, such as a watershed.

Fund Availability

Effective on the date of this notice, NRCS announces the availability of financial assistance funds in the following programs through the MRBI–CCPI in FY 2010:

- $40 million in EQIP
- $5 million in WHIP
- 278,000 acres in CSP (approximately equivalent to $5 million)

Under CCPI, partners coordinate with NRCS to provide financial and technical assistance to eligible landowners and agricultural producers to reduce nutrient loading to achieve water quality objectives and to improve wildlife habitat. Partners are not required to provide financial or technical assistance above that provided through NRCS programs, although partners that provide additional resources will be given higher priority consideration in the competitive selection process.

All Federal funds made available will be paid directly to program participants through CSP and EQIP contracts and WHIP cost-share agreements. No technical assistance funds will be provided to partners through an MRBI–CCPI agreement. However, NRCS State Conservationists may consider the development of a separate funding agreement with qualifying partners for the delivery of technical services.

CCPI Program Objectives

Under CCPI, NRCS enters into multi-year agreements with eligible partner organizations to address conservation priorities related to agriculture and nonindustrial private forest land. Individual landowners and agricultural producers are not eligible entities and may not submit CCPI proposals, nor may they apply for program benefits through this proposal submission process. In order to receive CCPI assistance, landowners and agricultural producers must participate within a project area defined in an approved CCPI agreement and enroll in EQIP, WHIP, or CSP. Landowners and agricultural producers interested in applying must meet the eligibility requirements of the program(s) for which they are applying. Individual landowner and agriculture producer applications will be evaluated and ranked by NRCS to ensure that applications selected for funding are most likely to achieve project objectives.

As part of the partnership agreements, partners may help facilitate the submission of landowner and agricultural producers' program applications, provide additional technical or financial assistance to participating landowners and agricultural producers, including nonindustrial private forest landowners, or provide other resources as defined in the agreement. MRBI–CCPI partnership agreements are to: (1) Address conservation priorities involving agriculture and nonindustrial private forest land within the designated 8-digit HUC focus areas that establish treatment needs and metrics at the 12-digit HUC scale; (2) encourage landowners and agricultural producers to cooperate in meeting applicable Federal, State, and local regulatory requirements related to production; (3) encourage landowners and agricultural producers to cooperate in the installation, monitoring, and maintenance of conservation practices; and (4) promote the development and demonstration of innovative conservation practices, delivery methods, and monitoring/evaluation of the practices. State Conservationists may provide guidance to potential partners related to resource concerns, priorities established by local working groups and State Technical Committees, and approved EQIP and WHIP conservation practices and activities for the focus areas, found at: *http://nrcs.usda.gov/programs/mrbi/mrbi.html.* State Conservationists may tailor this practice list based on the resource needs in the focus area; however, CSP will not have a modified enhancement list for MRBI–CCPI.

For each of a potential partner's proposed project areas (a single 12-digit watershed or multiple 12-digit watersheds within the designated focus area), NRCS strongly encourages the use of a "systems approach" to achieve conservation goals. The systems approach addresses nutrient runoff from multiple perspectives: "*Avoid*" the excess application of nutrients onto the field; "*Control*" the amount nutrient runoff from the fields into the watershed; and "*Trap*" nutrients before leaving the field. Once a project is funded, producer applications that achieve conservation goals through a "systems approach" will be given higher consideration in the ranking process.

Under CCPI, where flexibility is needed to meet project objectives, the partner may request that program adjustments be allowed provided such policy, procedural, or technical adjustments are within the scope of the applicable programs' statutory and regulatory program authorities. An example of a program adjustment may include expediting the applicable program ranking process in a situation where a partner has identified the landowners and agricultural producers approved to participate in the project. Other examples of adjustments may include applying flexibility in payment rate determinations, or using a single area-wide plan of operations rather individual plans of operations.

Eligible Partners

Eligible partners for CCPI include federally-recognized Indian tribes, State

and local units of government, farmer cooperatives, producer associations, institutions of higher education, and other non-governmental organizations with a history of working cooperatively with landowners and agricultural producers to effectively address conservation priorities related to agriculture and nonindustrial private forest land.

CCPI Applications

For MRBI–CCPI, NRCS will enter into EQIP and CSP contracts or WHIP cost-share agreements directly with eligible landowners and agricultural producers, including nonindustrial private forest landowners, who are participating in the project areas (12-digit subwatershed(s) within the designated 8-digit focus areas). Landowners and agricultural producers interested in participating in an approved MRBI–CCPI project may apply for approved MRBI–CCPI funds at their local USDA Service Center after the Chief announces project selection. The designated conservationist will help the landowner or agricultural producer determine which applicable programs (CSP, EQIP, or WHIP) are appropriate to apply for depending on the conservation systems or activities the producer seeks to install or perform to meet the approved partner's project objectives. For enrollment in the MRBI–CCPI, eligible land is defined for each program in the following regulations:

- EQIP: 7 CFR 1466.8(c)
- CSP: 7 CFR 1470.6(b)
- WHIP: 7 CFR 636.4(b)

Individual applications will be evaluated and ranked by NRCS to ensure that producer applications selected for funding are most likely to achieve objectives for the single 12-digit HUC subwatershed or multiple 12-digit HUC subwatersheds within the designated 8-digit focus area. Participants may have multiple contracts through MRBI–CCPI if more than one covered program is needed to accomplish the project objectives.

Proposal Requirements

For consideration of a proposal submitted through MRBI–CCPI in response to this notice, a potential partner must submit five copies (8.5″ × 11″ white paper) of the written proposal and one electronic copy on CD–ROM in MS WORD or PDF. If submitting more than one project proposal (proposals for multiple 8-digit focus areas), a potential partner must submit a separate complete document for each project. The entire project proposal should not exceed 15 pages in length including maps, reference materials, or related reports.

The basic format for the MRBI–CCPI proposal is a narrative written response to the questions and information requested in this notice. There are no forms required or associated with this proposal process.

(1) Proposal Cover and Summary: The first few pages of the proposal must include:

(a) Project title.

(b) Project Director/Manager name, telephone, and email address.

(c) Name of lead partner entity submitting proposal and other collaborating partners.

(d) Mailing address and telephone numbers for lead partner.

(e) Designated 8-digit focus area and 12-digit HUC subwatershed(s), wherein the project lies, including; State(s); County(s); and Congressional District(s). Include a general location map.

(f) Brief description/summary of the project and description of resource issues to be addressed as they relate to MRBI priorities and objectives. Identify the specific natural resource concerns to be addressed.

(g) Description of planning already completed at the field and watershed scales that identifies conservation practices/systems needed to address nutrient concerns.

(h) A list of the approved NRCS FOTG conservation practices, conservation enhancements, and conservation activity plans which will be used to address those resource concerns.

(i) Proposed project start and end dates (not to exceed a period of 5 years).

(j) Total budget for the project including the amount of MRBI–CCPI financial assistance being requested for the project by program by fiscal year.

(2) Project Natural Resource Objectives and Actions: The proposal must include the project objectives and the natural resource concerns that will be addressed.

(a) Identify and provide detail about the natural resource concern(s) to be addressed and how the proposal objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a time for completion.

(b) For each objective, identify the actions to be completed to achieve the objective and to address the identified natural resource concern. Specify which actions are to be addressed through the project using MRBI–CCPI assistance and those being addressed through alternate non-Federal funding sources or other resources provided.

(3) Detailed Proposal Criteria: Information provided in the proposal must include:

(a) A description of the partner(s) history of working with agricultural producers to address resource issues and the conservation objectives to be achieved.

(b) A detailed description of the watershed area including emphasis on treatment and metrics at the 12-digit HUC subwatershed(s) within the designated 8-digit HUC focus area covered by the proposal, conservation priorities in the area, conservation objectives to be achieved, and the expected level of participation by producers. Proposals should state whether a MRBI–CCPI proposal is integrated with a MRBI–WREP or Farm Service Agency Conservation Reserve Program (CRP), Continuous Sign-Up CRP (CCRP), Conservation Reserve Enhancement Program (CREP), or Farmable Wetlands Program (FWP) proposed or existing project, and include the name of any MRBI–WREP, CRP, CCRP, CREP, or FWP proposed project. Higher ranking may be given to integrated proposals.

(c) A description of the partner(s) and the roles, responsibilities, and capabilities of the partner(s). Proposals that include resources from partners other than the lead partner must include a letter or other documentation confirming the commitment of resources.

(d) A description of the project duration, plan of action, and project implementation schedule that details when the potential partner anticipates finishing the project and submitting a final report. Project proposals cannot exceed 5 years from start to completion.

(e) A description of the resources (financial and technical assistance) requested from each of the available NRCS programs (EQIP, WHIP, CSP) and the non-Federal resources provided by the partner(s) that will be leveraged by the Federal contribution. As determined by the State Conservationist, a maximum of 10 percent of total financial assistance funds in a proposal may be designated for edge-of-field monitoring to address critically unmet monitoring needs in the context of an overall monitoring and evaluation plan submitted by the partner. The partner is not required to provide any specific matching of financial or technical resources toward the project; however, proposals that include or offer non-Federal resources will be given higher priority through the evaluation process. Partners need to state clearly how they intend to leverage Federal funds along with partner resources. The funding and time contribution by agricultural producers and non-industrial forest owners to implement agreed-to

conservation systems in program contracts may not be considered any part of a match from the potential partner for purposes of MRBI–CCPI.

(f) A description of the plan for monitoring, evaluating, and reporting on progress made toward achieving the objectives of the agreement. The MRBI is adopting a three-tiered monitoring and evaluation approach designed to assess environmental outcomes at the field, 12-digit, and 8-digit watershed scales. Higher priority will be given to projects that adopt this three-tiered approach where the partner can provide resources or services. Higher priority will also be given to projects that utilize environmental indicators to monitor water quality and evaluate effects of conservation practices and activities implemented through the project on a field or edge-of-field scale as well as at selected downstream monitoring points. A framework for watershed and edge-of-field monitoring, including environmental indicators, can be found at: *http://www.nrcs.usda.gov/programs/mrbi/mrbi.html.*

(g) Potential criteria to be used by NRCS to prioritize and rank MRBI–CCPI producer applications in the project area. Additional information regarding the process NRCS uses to evaluate and rank individual producer applications is found in each of the authorized program regulations. The potential partner should include specific producer application ranking criteria in the proposal, so that NRCS can evaluate producer applications based upon the environmental objectives of the MRBI–CCPI project. Additional guidance and examples of acceptable ranking criteria may be obtained from the State Conservationist where the project will be located.

(h) An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that are expected to participate in the project along with an estimate of the total number of producers located in the project area. Producer participation is a requirement for delivery of MRBI–CCPI program benefits. A statement on how the partner will encourage participation to increase the likelihood of project success.

(i) A statement describing participation by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes.

(j) A listing and description of the conservation practices, conservation activity plans, conservation enhancements, and partner activities to be implemented during the project timeframe and the general sequence of project implementation. Other activities to address are those technical assistance efforts undertaken by the partner and those that the partner requests NRCS to implement using eligible approved MRBI–CCPI conservation practices, conservation enhancements, and project financial assistance funding. In this section, list all the approved MRBI–CCPI conservation practices and enhancements the partner wishes NRCS to offer to producers through the MRBI–CCPI project. A national list of the approved MRBI–CCPI core and supporting practices can be accessed from *http://nrcs.usda.gov/programs/mrbi/mrbi.html*; each State may have a slightly modified list. Information about these approved practices can be found in the Field Office Technical Guide at: *http://www.nrcs.usda.gov/technical/efotg/* or *http://www.nrcs.usda.gov/technical/standards/*. For each conservation practice, estimate the practice extent (feet, acres, number, etc.) the partner expects producers to implement each fiscal year during the life of the project and the amount of financial assistance requested to support implementation of each practice through producer contracts. Information on eligible conservation enhancements can be found at the CSP Web site at: *http://www.nrcs.usda.gov/programs/new_csp/csp.html.* Indicate whether the project will address regulatory compliance and any other outcomes that the partner expects to complete during the project period. Describe any activities that are innovative or include outcome-based performance measures implemented by the partner.

(k) A description of the amount of funds needed annually for producer contracts or agreements by eligible program (EQIP, WHIP, and CSP). This section of the proposal should include the total amount of financial assistance funds requested for each fiscal year of the project (for MRBI–CCPI multi-State projects provide the funds/acres by State) to be made available for producer contracts.

(l) A description of any requested policy, procedure, and technical adjustments, by program, with explanation of why the adjustment is needed in order to achieve the objectives of the project.

Ranking Considerations

NRCS will evaluate proposals using a competitive process and will give a higher priority to proposals that:

- Demonstrate the partner's history of working cooperatively with landowners;
- Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the area covered by the agreement;
- Facilitate the submission of landowner applications;
- Integrate both WREP and CCPI within a project area;
- Significantly leverage non-Federal financial and technical resources;
- Coordinate with other local, State, or Federal efforts, including with Farm Service Agency program efforts (e.g., CRP, CCRP, CREP, FWP) and the Environmental Protection Agency (EPA) funded watershed efforts (e.g. 319 projects);
- Provide for matching financial or technical assistance funds to assist participants with the implementation of their EQIP and CSP contracts and WHIP cost-share agreements;
- Assist the participants in meeting local, State, and Federal regulatory requirements;
- Demonstrate the partner's financial commitment to provide for water quality monitoring and evaluation of conservation practices, enhancements, and activities;
- Have a high potential to achieve water quality objectives through phosphorous (P) or nitrogen (N) nutrient reduction;
- Have a high potential to improve wildlife habitat;
- For WHIP and EQIP applications, include multiple core and supporting practices from each practice category (avoiding, controlling, and trapping) from the State-approved MRBI–CCPI practice list;
- Provide innovation in approved conservation practices, conservation methods, and delivery including outcome-based performance measures and methods;
- Have a high potential to maintain agricultural productivity;
- Provide evidence of a watershed planning process that:
  - ○ Identifies nutrients (N or P) causing water quality problems and identifies their sources enabling implementation to be prioritized,
  - ○ Identifies quantifiable project goals for field-scale nutrient management and watershed-scale nutrient load reduction,
  - ○ Identifies conservation practices and systems to be utilized to accomplish project goals/objectives,
  - ○ Identifies technical assistance and financial assistance needed,
  - ○ Includes an information and education component,
  - ○ Lists measurable interim milestones that relate to project goals, and
  - ○ Presents criteria for evaluation and adaptive management;
- Convert land from cropping systems to permanent vegetative practices when

supported by landowners and agricultural producers as part of overall agricultural operation;

• Adopt a three-tiered monitoring approach whereby the partner provides resources or services to conduct water quality monitoring activities and to evaluate the effects of conservation practices and activities implemented through the project on a field or edge-of-field scale, as well as at selected downstream monitoring points;

• Complete the application of the conservation practices, systems, or activities on all of the covered program contracts or cost-share agreements in less than 5 years;

• Have a high percentage of producers involved and working agricultural or nonindustrial private forest land included in the area covered by the agreement; and

• Deliver high percentages of applied conservation to address water quality, water conservation, or State, regional, or national conservation initiatives.

Part B: MRBI–WREP

Section 2206 of the 2008 Act establishes the WREP by amending section 1237A(h) of the Food Security Act of 1985 (16 U.S.C. 3837a(h)). Under WREP, NRCS enters into agreements with eligible partners to help enhance conservation outcomes on wetlands and adjacent lands. The purpose of WREP as part of MRBI is to target and leverage resources to protect, restore, and enhance wetlands; improve wildlife habitat; and reduce nutrient loading to achieve water quality objectives through agreements with eligible partners. Eligible partners include States (including a political subdivision or agency of a State), nongovernment organizations, and Indian tribes.

Fund Availability

Effective on the date of this notice, the CCC announces the availability of $25 million in financial assistance funds for WREP through the MRBI in FY 2010 to eligible landowners in the designated focus areas (8-digit HUCs).

WREP is administered under the Wetlands Reserve Program (WRP) and is a voluntary program designed to foster coordination with partners and to encourage non-Federal investment in natural resource conservation through the use of matching funds and in-kind services. WREP partners are required to contribute a financial match of at least 5 percent of the acquisition or restoration costs toward the project. Proposals which include resources provided by additional partners will be given higher priority consideration in the selection process. Contributions provided by the partners can be in the form of technical and financial assistance for the protection, restoration, and enhancement of the wetland. Partner contributions can also be used for management and monitoring activities. Additional contributions beyond the required financial match can be in-kind services or cash.

Eligible Partners

Under WREP, NRCS enters into multi-year agreements with eligible partners. Eligible partners for WREP include State and local units of government, Indian tribes, or nongovernmental organizations.

Eligible partners should submit complete proposals addressing the conservation objectives to be achieved within 12-digit HUC subwatershed(s) within designated 8-digit HUC focus areas. Proposals that integrate wetland protection, restoration, and enhancement activities within a proposed MRBI–CCPI project area will be given higher priority consideration in the selection process. Wetland restoration and enhancement actions will be designed to maximize wildlife habitat values and water quality according to the WRP regulation, 7 CFR part 1467, and NRCS FOTG standards and specifications. Proposals must conform to the WRP guidelines for restoration and management of lands subject to a WRP easement or contract.

Landowner Applications

For WREP, once a project area has been approved and announced, eligible landowners may apply for WRP through their local NRCS office. The land eligibility criteria for WREP are the same as for WRP and are listed in 7 CFR part 1467.4. NRCS and the partner will assist landowners in determining whether the application is appropriate for WREP depending on the wetland protection, restoration, and enhancement activities that the applicant seeks to install or perform. In FY 2010, NRCS will make WREP funds available to eligible landowners to enroll land under a permanent easement; a 30-year easement; or on acreage owned by Indian tribes, a 30-year contract.

WREP financial and technical assistance is delivered to eligible landowners in approved project areas through easement acquisition, conservation program contracts, cooperative agreements, contribution agreements, or Federal contracts. Restoration may be achieved through payments to other parties.

Proposal Requirements

For consideration of a proposal submitted through MRBI–WREP, a potential partner must submit five copies (8.5″ x 11″ white paper) of the written proposal and one electronic copy on CD–ROM in MS WORD or PDF. If submitting more than one project proposal (proposals for multiple 8-digit focus areas), a potential partner must submit a separate complete document for each project. The entire project proposal should not exceed 15 pages in length including maps, reference materials, or related reports.

The basic format for the WREP proposal is a narrative written response to the questions and information requested in this notice. There are no forms required or associated with the WREP proposal process.

(1) Proposal Cover and Summary: The first few pages of the proposal must include:

(a) Project title.

(b) Project Director/Manager name, telephone, and e-mail address.

(c) Name of lead partner submitting proposal and other collaborating partners.

(d) Mailing address and telephone numbers for lead partner.

(e) Designated 8-digit focus area and 12-digit HUC subwatershed(s), wherein the project lies, including; State(s); County(s); and Congressional District(s). Include a general location map.

(f) Short general description/summary of project.

(g) Potential acres to be enrolled in the project area.

(h) Proposed project start and end dates (not to exceed a period of 5 years).

(i) Total budget for the project including the amount of WREP financial assistance being requested for the project.

(2) Project Natural Resource Objectives and Actions: The proposal must address wetland restoration, including water quality concerns, in 12-digit subwatershed(s), located within the 8-digit focus areas, and the objectives of the project to address those concerns.

(a) Identify and provide detail about the natural resource concern(s) to be addressed and how the proposal's objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a timeframe for completion.

(b) For each objective, identify the actions to be completed to achieve that objective and address the identified natural resource concern. Specify which actions are to be addressed through this

project using WREP assistance, and which are being addressed through alternate non-Federal funding sources or other resources provided.

(c) Identify the total acres that require wetland protection, restoration, and enhancement.

(3) Detailed Proposal Criteria: Information provided in the proposal must include:

(a) A description of the partner(s) history of working with landowners to address natural resource issues.

(b) A detailed description of the 12-digit subwatershed(s) within the designated 8-digit focus area covered by the proposal, including a specific watershed map which indicates the project location. Proposals should state whether an MRBI–WREP proposal is integrated with an MRBI–CCPI proposed project, and include the name of the MRBI–CCPI proposed project.

(c) A description of the partner(s) and the roles, responsibilities, and capabilities of the partner(s). Proposals which include resources from partners other than the lead partner must include a letter or other documentation confirming the commitment of resources.

(d) A description of the project duration, plan of action, and project implementation schedule. Project proposals cannot exceed 5 years.

(e) A description of the financial assistance resources that are requested through the MRBI–WREP, and the non-Federal resources provided by the partner(s) that will be leveraged by the Federal contribution. The partner is required to contribute a financial match of at least 5 percent of the acquisition or restoration costs toward the project. Proposals that include additional non-Federal resources will be given higher priority consideration in the selection process. The partner needs to clearly state how they intend to leverage Federal funds along with partner resources. The funding and time contribution by landowners to implement agreed-to wetland restoration and enhancement practices may not be considered any part of a match from the potential partner for purposes of WREP.

(f) An estimate of the percentage of potential landowners in the project area that may participate in the project along with an estimate of the total number of potential landowners located in the project area. A statement on how the partner will encourage participation to increase the likelihood of project success.

(g) A statement describing participation by beginning farmers and ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes.

(h) A description of the wetland protection, restoration, and enhancement activities to be implemented during the project timeframe, and the general sequence of implementation of the project. Activities may include those efforts undertaken by the partner and those that the partner requests NRCS to address through financial support.

(i) The amount of funds needed annually for easement acquisition and wetland restoration and enhancement activities.

(j) A description of how the partner will provide outreach, especially to beginning farmers or ranchers, socially disadvantaged farmers and ranchers, limited resource farmers or ranchers, and Indian tribes.

Ranking Considerations

The appropriate State Conservationist will evaluate proposals using a competitive process and forward recommended proposals to the Chief. The Chief will give a higher priority to proposals that:

- Demonstrate the partner's history of working cooperatively with landowners;
- Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the area to be covered by the agreement;
- Facilitate the submission of landowner applications;
- Significantly leverage non-Federal financial and technical resources;
- Coordinate with other local, State, tribal, or Federal efforts, including with Farm Service Agency proposed or existing program efforts (e.g. CRP, Continuous Sign-Up CRP, CREP, FWP, and EPA-funded watershed efforts (e.g. 319 projects);
- Assist the participants in meeting local, State, tribal, and Federal regulatory requirements;
- Provide for monitoring and evaluation of the effectiveness of the restoration activities on water quality;
- Have a high potential to achieve water quality objectives through phosphorous (P) or nitrogen (N) nutrient reduction;
- Have a high potential to maximize habitat for migratory birds and other wetland-dependent wildlife;
- Provide innovation in wetland protection, restoration, and enhancement methods and outcome-based performance measures and methods;
- Provide evidence that wetland restoration and enhancement activities will be completed within 2 years of closing on the easement;
- Provide for matching financial or technical assistance funds to assist landowners with the implementation of the Wetlands Reserve Plan of Operations and associated contracts; and
- Integrate wetland protection, restoration, and enhancement activities within a proposed MRBI–CCPI project area.

Review of MRBI–CCPI and MRBI–WREP Proposals

The State Conservationist(s) will review the proposals to address:

- Potential cooperation or duplication of efforts with other projects or existing programs;
- Adherence to, and consistency with, program regulation including requirements related to land and producer eligibility and use of approved NRCS resource concerns and conservation practices, conservation enhancements, and other program requirements;
- Expected benefits for project implementation in their State(s);
- Other issues or concerns the State Conservationist is aware of that should be considered by the Chief; and
- A general recommendation for support or denial of project approval.

Prior to submission of the proposal, potential partners are strongly encouraged to consult with the appropriate State Conservationist(s) during proposal development to obtain guidance as to appropriate resource concerns to address conservation practices, wetland restoration, enhancement activities needed, and other details of the project proposal.

All proposals submitted become the property of NRCS for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted to the agency for review and ranking, there will be no further opportunity to change or re-submit the proposal document.

Acknowledgement of Submission and Notifications

Partners whose proposals have been selected will receive a letter of official notification from the Chief. The Chief will make the final selection for all projects based on the ranking criteria listed above. Upon notification of selection, the partner should contact the NRCS State Conservationist listed in the letter to develop the required partnership agreement and other project implementation requirements. Partner

submissions of proposals not selected will be notified by mail.

Withdrawal of Proposals

Partner proposals may be withdrawn by written notice to the Chief or State Conservationist at any time prior to selection.

Partnership Agreements

NRCS will enter a partnership agreement with a selected partner who has an approved project as the mechanism for participation in MRBI–CCPI or MRBI–WREP. At a minimum, the partnership agreement will address:

- The role of the partner;
- The role of NRCS;
- The responsibilities of the partner relating to water quality monitoring and evaluation if included as part of the proposal. NRCS reserves the right to negotiate with the partners on refinements to the monitoring and evaluation plan to address MRBI objectives;
- The format and frequency of reports (semi-annual, annual, and final) that are required as a condition of the agreement;
- Plan of work and budget to identify other funding sources (if applicable) for financial or technical assistance;
- The specified project schedule; and
- Other requirements deemed necessary by NRCS to further the purposes of the MRBI–CCPI or MRBI–WREP project.

Once a project is selected, NRCS will evaluate a project's progress throughout the project lifecycle. NRCS will enter into a project agreement for the necessary funds agreed to for FY 2010. In proposed projects years beyond FY 2010, NRCS may obligate additional funds without further competition based on an assessment of the project's effectiveness in achieving MRBI objectives and the availability of funds.

Waiver Authority

To assist in the implementation of WREP or CCPI projects, the Chief may waive the applicability of the Adjusted Gross Income Limitation on a case-by-case basis in accordance with policy and processes promulgated in 7 CFR part 1400. Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local NRCS district conservationist.

Signed this 23rd day of February 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

Attachment

NATURAL RESOURCES CONSERVATION SERVICE STATE CONSERVATIONISTS—MRBI STATES

State	Name	Address	Phone	E-mail address
Arkansas	Michael E. Sullivan	Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3228.	(501) 301–3100	*michael.sullivan@ar.usda.gov.*
Illinois	William J. Gradle	2118 W. Park Court, Champaign, Illinois 61821.	(217) 353–6601	*bill.gradle@il.usda.gov.*
Indiana	Jane E. Hardisty	6013 Lakeside Boulevard, Indianapolis, Indiana 46278–2933.	(317) 290–3200	*jane.hardisty@inn.usda.gov.*
Iowa	Richard Sims	693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309–2180.	(515) 284–6655	*richard.sims@ia.usda.gov.*
Kentucky	Tom Perrin	771 Corporate Drive, Suite 110, Lexington, Kentucky 40503–5479.	(859) 224–7350	*tom.perrin@ky.usda.gov.*
Louisiana	Kevin D. Norton	3737 Government Street, Alexandria, Louisiana 71302.	(318) 473–7751	*kevin.norton@la.usda.gov.*
Minnesota	Jennifer Heglund	375 Jackson Street, Suite 600, St. Paul, Minnesota 55101–1854.	(651) 602–7900	*jennifer.heglund@mn.usda.gov.*
Mississippi	Homer Wilkes	Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269–1399.	(601) 965–5205	*homer.wilkes@ms.usda.gov.*
Missouri	J.R. Flores	Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, Missouri 65203–2546.	(573) 876–0901	*Jr.flores@mo.usda.gov.*
Ohio	Terry J. Cosby	200 North High Street, Room 522, Columbus, Ohio 43215–2478.	(614) 255–2472	*terry.cosby@oh.usda.gov.*
Tennessee	Kevin Brown	675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203–3878.	(615) 277–2531	*kevin.brown@tn.usda.gov.*
Wisconsin	Patricia Leavenworth	8030 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.	(608) 662–4422	*pat.leavenworth@wi.usda.gov.*

[FR Doc. 2010–4275 Filed 3–1–10; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prescott National Forest, Bradshaw Ranger District; Arizona; Bradshaw Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This project is a proposal to improve the health of fire adapted ecosystems while simultaneously reducing hazardous fuels on the Bradshaw Ranger District. The project area encompasses about 55,554 acres. Within the project area, the proposal is to commercially thin approximately 16,312 acres in ponderosa pine, pine-oak, and mixed conifer forest types. Fuels treatments include mechanized fuel reduction on 34,445 acres of chaparral, pinyon-juniper, and oak sites and non-mechanized fuel reduction treatments on 6,242 acres of chaparral, juniper, pinyon, oak, pine, and mixed conifer sites. Prescribed fire is proposed on 44,641 acres and fuelbreak construction is proposed on 791 acres. It is expected that this project will require a site specific forest plan amendment to the Prescott National Forest Land and Resource Management Plan (1986), as amended, in order to implement treatments within Mexican Spotted Owl habitat.

DATES: Comments concerning the scope of the analysis should be received within 30 days after publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in December, 2010 and the final environmental impact statement is expected in March, 2011.

ADDRESSES: Send written comments to Jodi Stevens, Bradshaw Ranger District, 344 South Cortez Street, Prescott, Arizona 86303. Comments may also be submitted by e-mail to: *comments-southwestern-prescott@fs.fed.us.* Include "Bradshaw Vegetation Management" in the subject line of e-mail comments. Electronic comments must be submitted in Word (.doc), RichText (.rtf), or Adobe Acrobat (.pdf) format.

FOR FURTHER INFORMATION CONTACT: Jodi Stevens, 928–443–8041 or *jodistevens@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the proposed action is to improve the health of fire adapted ecosystems while simultaneously reducing hazardous fuels. The EIS will describe existing conditions and desired conditions, analyze environmental consequences of shifting existing conditions towards desired conditions, and assist the decision maker in selecting management strategies that will achieve desired conditons. The proposed action is needed due to prominent changes in the structure and function of vegetation and fire behavior within the analysis area, and the proximity of homes and private property to these changed conditions. The changes in vegetation and fire behavior are a result of aggressive fire suppression over the past several decades. One of the most effective ways to protect communities is to create defensible fuel profile zones both adjacent to homes and private property and on adjacent public lands.

Proposed Action: The Prescott National Forest proposes to commercially thin approximately 16,312 acres in ponderosa pine, pine-oak, and mixed conifer forest types.

Proposed fuels treatments include mechanized fuel reduction on 34,445 acres of chaparral, pinyon-juniper, and oak sites, and non-mechanized fuel reduction treatments on 6,242 acres of chaparral, juniper, pinyon, oak, pine, and mixed conifer sites. Prescribed fire is proposed on 44,641 acres and fuelbreak construction is proposed on 791 acres. The project area is located to the southeast, south, southwest, west and northwest of the city of Prescott. Implementation of this proposed project could begin as early as June 1, 2011.

Responsible Official

The Responsible Official for this project is the Forest Supervisor, Prescott National Forest, Prescott, Arizona.

Nature of Decision To Be Made

The Forest Service will evaluate the proposed action and alternatives to the proposed action. After reviewing the proposed action, the alternatives, the environmental analysis, and considering public comment, the Forest Supervisor will reach a decision that is in accordance with the purpose and need for this project. The decision will include a description of activities that will be implemented. Issues identified as being outside the scope of this proposal (such as grazing cattle on the Forest or the need for additional recreation opportunities) will not be addressed in this planning effort.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and be as specific as possible. There will be a public scoping meeting on Thursday, February 25, 2010 from 6 p.m. to 8 p.m. Arizona Time. This meeting will be held at the Mackin Building at the Prescott Rodeo Grounds, 840 Rodeo Drive, Prescott, AZ, 86305. Scoping letters will be mailed to individuals and entities who have identified themselves as interested publics regarding proposed actions on the Prescott National Forest. Additionally, scoping input will be requested through a publication in the Prescott Courier, the newspaper of local circulation in the proposed project area.

Dated: February 18, 2010.

Reta Laford,

Acting Forest Supervisor, Prescott National Forest.

[FR Doc. 2010–3965 Filed 3–1–10; 8:45 am]
BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Fifty-Ninth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and fifty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 4 p.m. on March 3, 2010 at the National Press Club located at 529 14th St., NW., Washington, DC. "Higher Education: A Critical Partner in Global Agricultural Development" will be the central theme of BIFAD's initiatives and the March meeting.

Dr. Robert Easter, Chairman of BIFAD, will preside over the proceedings. Dr. Easter is Interim Chancellor for the University of Illinois at Urbana-Champaign.

The confirmation of Dr. Rajiv Shah as USAID's new administrator will define the work of BIFAD, consistent with

BIFAD's legislative mandate, for the foreseeable future. Accordingly, the 159th BIFAD meeting will attempt to respond to Dr. Shah's priorities. Dr. Shah brings a strong background in global food security issues. Within this context comes the recognition that only through broad-based partnerships and multidisciplinary approaches will the US achieve priority foreign assistance goals in a dramatically changed development world. It is in the spirit of the Title XII mandates and in view of today's development realities, underpinned by complex socio-economic conditions and regional conflicts, that BIFAD is leading as a "gateway" to the university community.

It is expected that Dr. Shah will participate in the meeting and present to the Board his vision and priorities for the Agency. If the situation in Haiti or other unanticipated contingencies preclude him from attending, Karen Turner, the Director of the Office of Development Partners or Carol Grigsby, the Office's Deputy Director, will represent the Administrator. In the event that new BIFAD members are announced, there is a possibility that they could be officially sworn in by Administrator Shah, or Director Turner or Deputy Director Grigsby.

The Board and USAID have been collaborating closely to develop a Memorandum of Understanding to define our strategic partnership. The purpose of the MOU is to set forth the understandings and intentions of USAID and BIFAD with regard to shared goals and to mobilize the capacities of U.S. universities to implement program components under Section 103 (Agriculture, Rural Development and Nutrition) and 103A (Agriculture Research) of the Foreign Assistance Act. Five key areas were identified for maximum collaboration: USG Food Security Strategy and Program; USG Global Climate Change Strategy and Program; Education and Training for Youth; Afghanistan/Pakistan Agriculture Strategy and Program; and Rebuilding USAID Technical Capacity. The MOU was vetted during the last BIFAD meeting in October. It should be ready for signing during the 159th meeting with a brief ceremony.

Next, Gebisa Ejeta, last year's World Food Prize recipient, will present to the Board a presentation, "Food Security: the Science, Sociology and Economics of Food Production and Access to Food." He will emphasize the critical need to strengthen science-based thinking within development planning and implementation and rational decision-making into the policy formulation process. Dr. Ejeta is currently at Purdue University. Dr. Easter will also be making a presentation, with possible responder to Dr. Ejeta.

During 2009, the Board held a number of sessions and activities related to the agricultural strategy for Afghanistan and how universities can help USAID turn battle space into development space. This session will provide an update on the Trilateral Af-Pak process, building towards a conference later this spring in Doha, Qatar. The conference will bring together university representatives managing on-the-ground agricultural projects in Afghanistan with key Afghans and Pakistanis, to develop a 5 year plan for integrating long-term agricultural training and capacity building into the agricultural development strategy.

The devastating earthquake in Haiti will be the focus of a session to demonstrate how BIFAD and universities can bring value to USAID on Haiti, as well as the Caribbean region. The session will be led by Board member Dr. Elsa Murano, University of Texas. Walter Bowen, Acting Director, International Programs. Institute of Food and Agricultural Sciences, University of Florida, will share some experiences University of Florida has had in Haiti. His project, Watershed Initiative for National Natural Environmental Resources, is aimed at implementing broad scale investments in sustainable natural resource management at the scale and density needed to produce future positive landscape level reductions in environmental, infrastructural, and economic vulnerability. The Latin America and Caribbean Bureau (LAC) at USAID will be intimately involved, and there will be discussion on wider application throughout the Caribbean region.

Concluding the morning session, John Becker, USAID Office of Development Partners, will make a presentation and lead discussion on application of the Bumpers Amendment. The Bumpers Amendment forbids the United States Agency for International Development (USAID) from giving money to any program that would increase the production of a crop that could compete with the United States on the world market.

After an executive luncheon (closed to the public) the Board will re-convene. Scheduled as the afternoon's first session will be a follow-on to the Board's efforts to highlight the critical role that Minority Serving Institutions continue to play in international agricultural development, particularly in improving the livelihood of small farmers. William DeLauder, Board member and President-Emeritus of Delaware State University, will lead the session. This discussion is being designed to open a new dialogue and begin exploring effective partnering with USAID.

Following the MSI panel, Montague Demment, Director, Global Livestock Collaborative Research Support Program (CRSP), will lead a discussion on the Borlaug Leap Program and other BIFAD long-term training activities, in cooperation with USAID's Economic Growth, Agricultural, and Trade Bureau (EGAT). These are very important programs that help build human and institutional capacity in agriculture.

Concluding the afternoon session, the Board will hear an update on BIFAD's efforts to establish a Joint Committee on Operations, as called for in Title XII, to increase the technical capacity of the Board. Such a Committee would replace the Strategic Partnership for Agricultural Research and Education (SPARE). Ray Miller, Director of International Programs, University of Maryland, will lead the discussion.

The Board meeting is open to the public. The Board welcomes open dialogue to promote greater focus on critical issues facing USAID, the role of universities in development, and applications of U.S. scientific, technical and institutional capabilities to international agriculture. *Note on Public Comments:* Due to time constraints public comments to the Board will be limited to three (3) minutes to accommodate as many as possible. It is preferred to have requests for comments submitted to the Board in writing. Two periods for public comment will be provided during the Board meeting—just before lunch and adjournment.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, Executive Director and Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Development Partners, 1300 Pennsylvania Avenue, NW., Room 6.7–153, Washington, DC 20523–2110 or telephone him at (202) 712–0218 or fax (202) 216–3124.

Ronald S. Senykoff,

Executive Director and USAID Designated Federal Officer for BIFAD, Office of Development Partners, U.S. Agency for International Development.

[FR Doc. 2010–4285 Filed 3–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

On behalf of the Committee for the Implementation of Textile Agreements, the Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States—Peru Trade Promotion Agreement Implementation Act (Act).

Form Number(s): N/A.

OMB Control Number: 0625–0265.

Type of Request: Regular submission.

Burden Hours: 89.

Number of Respondents: 16.

Average Hours per Response: 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

Needs and Uses: The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the Agreement), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Peru or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Section 203(o) of the Act implements the commercial availability provision of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B.

Section 203(o) of the Act provides that the President may modify the list of fabrics, yarns, and fibers in Annex 3–B by determining whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or Peru, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to Committee for the Implementation of Textile Agreements (CITA), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA) (*See* Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the **Federal Register** on August 14, 2009. *See* 74 FR 41111.

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: February 25, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–4263 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Cordell Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Cordell Bank National Marine Sanctuary Advisory Council: Fishing, Primary and Alternate seats; Maritime Activities, Primary and Alternate seats; Community-at-Large Sonoma County, Primary and Alternate seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's Charter.

DATES: Applications are due by April 15, 2010.

ADDRESSES: Application kits may be obtained from *http://cordellbank.noaa.gov/* or Kaitlin Graiff, *kaitlin.graiff@noaa.gov,* P.O. Box 159 Olema, CA 94950. Completed applications should be sent to the above postal or e-mail address, or faxed to 415–663–0315 attn. Kaitlin Graiff.

FOR FURTHER INFORMATION CONTACT: Kaitlin Graiff, Advisory Council Coordinator, 415–663–0314 x105, *kaitlin.graiff@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Cordell Bank National Marine Sanctuary Advisory Council was established in 2001 to ensure continued public participation in the management of the sanctuary. Council seats are occupied by members representing research, conservation, maritime activity, fishing, education, the community at-large, as well as Federal agency partners. Individual council members act as liaisons between the Sanctuary and their constituent groups. The council holds a minimum of four regular meetings per year, and an annual retreat in the summer.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 12, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–3898 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order

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

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Demitrios Kalogeropoulos, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5848 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("the Department") initiated the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from the People's Republic of China ("PRC") for the period June 1, 2008, through May 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009). Due to the closure of the Government resulting from recent snowstorms, as of February 12, 2010, all Import Administration deadlines have been uniformly tolled for one calendar week. As a result, the current March 2, 2010, deadline for the publication of the preliminary results has been tolled to March 9, 2010. Thus, the preliminary results are currently due no later than March 9, 2010.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit of Preliminary Results

The Department finds it is not practicable to complete the preliminary results of this review within the original time limit because we require additional time to analyze various complicated issues involving, for example, ownership of a certain respondent, and to obtain additional information from the respondents. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by the full 120 days allowed under section 751(a)(3)(A) of the Act. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this administrative review is now March 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. An extension of 120 days from this revised deadline would result in a new deadline of July 7, 2010, for the publication of the preliminary results. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 23, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4284 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU74

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Advisory Panel (AP) will hold a meeting.

DATES: The AP meeting will be held on March 24, 2010, from 9:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Buccaneer Hotel, 5007 Estate Shoys, Lot 7, Christiansted, n St. Croix, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The AP will meet to discuss the items contained in the following agenda:

- Call to order
- SSC Meeting Report
- Queen Conch Compatible Regulations
- Trap Reduction Programs - USVI Meeting Report
- ACLs Discussion
- Other Business

The meeting is open to the public, and will be conducted in English. However, simultaneous interpretation (from English to Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those

issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 25, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–4297 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU75

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The two-day meeting will be held on March 30, 2010 and March 31, 2010.

ADDRESSES: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411; fax: (207) 775–2872.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Tuesday, March 30, 2010 beginning at 9:30 a.m.

The Herring Committee will continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP); alternatives may include management measures to: improve quota monitoring and reporting; standardize/certify volumetric measurements of catch; address vessel-to-vessel transfers of Atlantic herring; address requirements for catch monitoring and control plans(CMCPs); address maximized retention; maximize sampling and address net slippage; address at-sea monitoring; address dockside monitoring; require electronic monitoring; and address other elements of catch monitoring in the Atlantic herring fishery.

2. Wednesday, March 31, 2010 beginning at 9 a.m

The Committee will continue the agenda from the previous day - development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring FMP. They will discuss issues related to timing of next benchmark stock assessment for Atlantic herring and develop a Committee recommendation for Council consideration. They will also address other elements of Amendment 5 as time permits. Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: February 25, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–4298 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

RIN 0693–ZA95

[Docket No.: 100201057–0059–01]

National Institute of Standards and Technology Construction Grant Program

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that it is holding a competition for the NIST Construction Grant Program, and is soliciting proposals for financial assistance for FY 2010. The goals and objectives of the program are to provide competitively awarded grant funds for research science buildings through the construction of new buildings or expansion of existing buildings.

DATES: A Letter of Intent (Form NIST–1102) is required and must be received no later than 3 p.m. Eastern Time, Monday, March 29, 2010. The corresponding full proposal must be received no later than 3 p.m. Eastern Time, Monday, April 26, 2010. Review, selection, and grant award processing is expected to be completed in September 2010.

ADDRESSES: Letters of Intent may only be submitted by paper to: National Institute of Standards and Technology; Construction Grant Program; 100 Bureau Drive, Stop 4701; Gaithersburg, MD 20899–4701; Attn: Anneke Tingle—301–975–5060. The corresponding full proposals may be submitted by paper or electronically. Paper Submissions: National Institute of Standards and Technology; Construction Grant Program; 100 Bureau Drive, Stop 4701; Gaithersburg, MD 20899–4701; Attn: Anneke Tingle—301–975–5060. Electronic submissions: *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Lambis at 301–975–4447 or by e-mail at *barbara.lambis@nist.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information. The full Federal Funding Opportunity (FFO)

announcement for this request for proposals contains detailed information and requirements for the program. Applicants are strongly encouraged to read the FFO announcement in developing proposals. The full FFO announcement is available at *http://www.grants.gov* and on the NIST Web site at *http://www.nist.gov/director/ncgp/*.

Statutory Authority. The statutory authority for this program is the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) and Consolidated Appropriations Act, 2010 (Pub. L. 111–117).

CFDA. 11.618, NIST Construction Grant Program.

Program Description. The Omnibus Appropriations Act, 2009 (Pub. L. 111–8) appropriated $30 million to NIST "for a competitive construction grant program for research science buildings. Additional information on the program provided in an Explanatory Statement published in the Congressional Record (which serves as the Conference Report) indicates that Congress intended to provide NIST $30,000,000 for competitive construction grants for research science buildings. (See 155 Cong. Rec. H1735 (daily ed. Feb. 23, 2009).) The statement also indicates that "grants shall be awarded to colleges, universities, and non-profit science research organizations on a merit basis. Additionally, the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) appropriated an additional $20 million to NIST for a competitive construction grant program for research science buildings.

Pursuant to the statutory authorities cited above and in consideration of the legislative history, NIST publishes this notice to set forth the program goals and objectives, and to solicit Letters of Intent and full proposals for the NIST Construction Grant Program. The goals and objectives of the program are to provide competitively awarded grant funds for research science buildings through the construction of new buildings or expansion of existing buildings. For purposes of this program, "research science building" means a building or facility whose purpose is for the conduct of scientific research, including laboratories, test facilities, measurement facilities, research computing facilities, and observatories. In addition, "expansion of existing buildings" means that space to conduct scientific research is being expanded from what is currently available for the supported research activities. NIST seeks proposals that successfully address the evaluation criteria below.

Unallowable/Ineligible Projects

The following projects are unallowable/ineligible under this program:

1. Projects to construct or expand a building not intended for performing research or that will predominately be equipped with routine office equipment and/or lecture/class room furnishings.
2. Projects to construct facilities that will primarily benefit undergraduate research training programs, rather than the creation of new graduate level research programs, or expanding existing graduate level research programs.
3. Projects to construct facilities that will primarily benefit the education of the general public rather than support research activities.
4. Projects that include tasks for constructing shell space that will not be completed into research space within the grant will have these tasks removed.

Unallowable/Ineligible Costs

The following items, regardless of whether they are allowable under the Federal cost principles, are unallowable under this program and may not be used as cost sharing:

1. Ancillary Structures, rights-of-way surveys, appraisals, etc.
2. Costs or charges associated with routine maintenance, or operation of the facility.
3. Equipment used for research or otherwise that is not an integral part of the building's structure, *e.g.,* table top equipment, portable air conditioners, etc. Equipment that is an integral part of the building such as fume hoods, HVAC equipment, built-in autoclave, etc., is allowable.
4. Furniture other than fixed laboratory casework.
5. Interior decorating.
6. Landscaping or other improvements exterior to the footprint of the building, unless required for its operation.
7. Purchase of land.
8. Relocation expenses.
9. Safety equipment items, *e.g.,* fire extinguishers, first-aid kits, etc. Built-in safety items, *e.g.,* eye wash stations or chemical showers, however, are fixed items and are allowable.
10. Storage costs.
11. Telephone and/or network equipment, *e.g.,* servers, storage, racks, etc., however, IT and telephone cabling and wiring installed during construction is allowable.
12. Training, unless related to regulatory compliance for construction.

Funding Availability. Up to $50 million is available for new grants for the FY 2010 competition. NIST anticipates funding three to five projects with Federal shares in the $10 million—$15 million range with a project period of performance of up to five (5) years, although there is an expectation that most of the projects will be completed prior to five years. The anticipated start date will be one month after the award is made. The period of performance depends on the construction schedule proposed.

Eligibility Criteria. U.S. institutions of higher education and non-profit organizations are eligible to apply.

Restrictions on Submission of Letters of Intent and Full Proposals and on Proposal Funding

Each applicant organization may submit only two Letters of Intent (form NIST–1102), in response to this solicitation, and two corresponding full proposals. If more than two Letters of Intent are received from the same applicant organization, NIST will acknowledge receipt of each and provide notice that if more than two full proposals are received from the same applicant organization at the time of full proposal submission, all full proposals from that same applicant organization will be rejected and returned without review. A full proposal may not be submitted unless NIST has received the required Letter of Intent by the deadline and the applicant has received an acknowledgement letter from NIST. If a full proposal is submitted to NIST from an applicant who did not submit the required Letter of Intent for their full proposal, the full proposal will be rejected and returned to the applicant without review. Although each applicant organization may submit two full proposals, only one full proposal project from each applicant organization may be funded.

Institutions of Higher Education Status as Single or Multiple Applicants: Large, multi-campus academic systems usually have distinct campuses with their own chancellors, student admissions, and separate research or research training activities. Such a campus, which exists as a separate university, with its own student programs and degrees, qualifies as a separate entity for the purpose of submitting a Letter of Intent and corresponding full proposal.

If a university includes multiple colleges of study, whether located in the institution's main campus or located some miles from the main university campus on a physically distinct campus, they are not considered separate entities. Campuses in a multi-campus situation may submit

independent proposals if they are part of a multi-campus system, such as a state university system or state community college system, and have independent administrative structures typical of universities or community colleges. Campuses headed by Department Heads, Deans, Center Directors or other administrators at similar levels are not eligible to submit an independent proposal.

If a university established a Research Foundation specifically to promote, encourage and provide assistance to the research activities of the university, and the Research Foundation is a separate non-profit science research organization, is incorporated under State laws and regulations, and is led by a separate governing board and committees, it still supports the activities of the university and cannot be considered an organization with interests distinct from the university. It has no students or faculty of its own, separate from the university. Accordingly, research proposals submitted by the Research Foundation will count toward the institutional proposal limit.

Use of NIST–1102, Letter of Intent. A "letter of intent" may only be submitted using the mandatory form NIST–1102, Letter of Intent. If a "letter of intent" is submitted in other than the required form NIST–1102, Letter of Intent, the applicant will NOT be eligible to submit a corresponding full proposal. Additionally, failure to provide all required information on the NIST–1102, Letter of Intent, may result in the applicant being ineligible to submit a corresponding full proposal.

Cost Sharing Requirements. This program requires a cost share of at least 20 percent of the yearly total project costs.

Evaluation Criteria. The evaluation criteria that will be used in evaluating proposals are as follows:

1. Scientific and technical merit of the proposed use of the facility and the need for Federal funding (50 percent).

This criterion addresses the intellectual merit and broader impacts of the proposed use of the facility; the strategic research directions planned with the facility and how well the plan is conceived and organized; what the facility will enable in terms of the advancement of knowledge and understanding within a specific field(s) or across different fields; the qualifications of the proposed key researchers (individuals or teams) which will use the facility, as well as the management team that will lead them; the potential for targeted impacts resulting from the use of the facility that are unlikely to be achieved with the current infrastructure, such as what transformative or creative concepts may expand the science and technology knowledge base; the extent to which the facility will enhance collaborations within and outside of the institution; and the need for Federal funding due to a lack of alternative funding sources, specifically what other sources were pursued.

2. The quality of the design of the research science building (25 percent).

This criterion addresses the quality of the design information provided for the building/facility to establish that the design has the ability to meet the safety, physical, environmental, experimental/research (*e.g.* unique environmental controls—vibration, humidity temperature etc.), and operational (*e.g.* utilities and circulation of people) requirements of the science and technology activities the building/facility is expected to support. It also addresses whether or not preliminary drawings and plans, together with appropriate estimates, of in-house or vendor costs, are complete, in progress, or planned. Furthermore, it addresses the rationale for and summary specifications of the building/facility, including location, size, configuration, environmental controls for research space, utility needs, gross and/or assignable square footage, assignments of square footage to research and non-research related activities (*e.g.,* routine administrative office space, conference rooms, classrooms, *etc.*), and the assigned purpose by areas. Finally, this criterion addresses the incorporation of green/sustainable design features in the project.

3. Adequacy of the detailed Project Management Plan (PMP) for construction of the research science building/facility (25 percent). The program will evaluate the following four aspects of the PMP, which do not vary in importance:

a. Project Scope and Requirements

This aspect of the PMP addresses the description and organization of project work packages (project tasks/elements) in a clear and complete Work/task Breakdown Structure (WBS) approach that comprises the total scope of the building/facility project from inception through commissioning of the facility, including descriptions of each work package and its associated subtasks, the relationship between the work packages and their associated subtasks, consolidated into a unified project scope description that will be used by project management key personnel throughout the project management life-cycle to identify and monitor project progress, as well as link and track work packages and subtasks to the budget and schedule plans addressed in c.(2) below. In addition, this criterion addresses which work packages are proposed to be within, before, or after the project period. The project period covers only the Federal and the allowable auditable cost sharing portion of the project.

b. Adequacy of the Proposed Project Time Schedule and Linkage to the Budget, Including the Clarity of the Budget and the Budget Narrative

This aspect of the PMP addresses the time schedule for implementing the work packages and associated subtasks described within the WBS addressed in c.(1) above, and how the budget costs associated with the work packages correctly sum up to each of the cost categories of the SF–424C by project year.

c. Capability To Manage the Project

This aspect of the PMP addresses the approach planned for project management monitoring and risk control during the life of the award, from kick-off through close-out, which may include tools, techniques and processes (manual and automated systems). It also addresses an analysis of potential project risks (*e.g.* timing, cost and/or scope changes), where in the schedule risk(s) may be expected, and how the risk(s) may be mitigated through specific control mechanisms, and the planning/control decision making process to implement the control mechanisms. Finally, it addresses the management plan for direction and implementation of the project, including capability descriptions of the performing organizations and experience summaries for the manager with fiduciary project responsibility, the project manager, and other key project personnel as appropriate.

d. Soundness of the Financial Commitments To Implement the PMP

This aspect of the PMP addresses the current and any pending commitments required for the building/facility to be constructed, commissioned and become fully operational, including any risk(s) associated with finalizing funding commitments and the organizational name/contact that has the fiduciary authority over the funding commitments.

Selection Process

1. *Letter of Intent—Form NIST–1102.* An initial administrative review of timely received letters of intent will be

conducted to determine compliance with requirements and completeness. NIST will send an acknowledgement letter to all applicants who timely submit a Letter of Intent with results of the review. It is expected that the Letter of Intent will be reviewed for eligibility of the proposed applicant and proposed project, and whether or not the scientific research to be performed in the building/facility will complement one or more programs of DoC's three science organizations' Program Priorities. (See section V.3. Program Priorities of the FFO announcement.)

2. *Full Proposal.* An initial administrative review of timely received full proposals will be conducted to determine compliance with requirements and completeness. Proposals that are nonresponsive and/or incomplete will be eliminated. Each of the responsive and complete proposals will receive a minimum of three independent reviews, which will include written evaluations and scores, based on the evaluation criteria. Reviews addressing evaluation criteria 2 and 3 above may be performed by non-Federal Engineers or Architects. No consensus advice will be given by the reviewers. Failure of an applicant to cooperate with NIST in identifying feasible measures to reduce or avoid identified adverse environmental impacts of its proposed project may result in the applicant not receiving an award. (See National Environmental Policy Act section below for more information.)

The individual proposal evaluations and scores will be considered by an Evaluation Board(s), a committee comprised of Federal employees. This Board(s) will present proposals in numerical rank order and provide funding recommendations, based on the evaluation criteria, to a Selecting Official for further consideration. In making final selections, the Selecting Official, who is the Chief Facilities Management Officer at NIST, will select funding recipients based upon the Evaluation Board's rank order of the proposals and the selection factors. The selection of proposals by the Selecting Official is final and cannot be appealed.

NIST reserves the right to negotiate the cost and scope of the proposed work with the applicants that have been selected to receive awards. This may include requesting that the applicant delete from the scope of work a particular task that is deemed by NIST to be inappropriate for support (or of a lower priority compared with competing uses of funds) against the evaluation criteria or selection factors. NIST also reserves the right to reject a proposal where information is uncovered that raises a reasonable doubt as to the responsibility of the applicant. The final approval of selected proposals and award of grants will be made by the NIST Grants Officer. The award decision of the NIST Grants Officer is final and cannot be appealed.

Applicants may not submit replacement and/or revised pages and/or documents for any portion of a proposal once that portion has been submitted unless specifically requested by NIST.

One copy of each incomplete, nonresponsive, or non-selected proposal will be retained for three (3) years for record keeping purposes and the other two (2) copies will be destroyed. After three (3) years the remaining copy will be destroyed.

Selection Factors

The Selecting Official shall recommend proposals for award based upon the Evaluation Board's rank order of the proposals, and may select a proposal out of rank based on one or more of the following selecting factors:

1. Assuring a balance/distribution of projects across the program priorities (see FFO section V.3. Program Priorities).
2. Availability of Federal funds.
3. Whether this project duplicates other projects funded by DoC or other Federal agencies.
4. Applicant's prior Federal award performance.
5. Assuring a balance/distribution of funds across regional/geographic areas.
6. Whether the applicant has received previous funding under the NIST Construction Grant Program.

As noted above, no more than one full proposal per applicant organization will be funded.

Program Priorities

All applicable fields of science that complement one or more programs of DoC's three science organizations: NIST, the National Oceanic and Atmospheric Administration (NOAA), and the National Telecommunication and Information Administration (NTIA). Specifically, these include science related to measurements, oceans and atmosphere, and telecommunications. More information about those programs can be found on the agencies' Web sites (*http://www.nist.gov, http://www.noaa.gov,* and *http://www.ntia.doc.gov*).

Proposals are only required to link to the program priorities of one of the three DoC science organizations. Proposals that address program priorities of more than one organization are *not* considered to be more competitive based on that fact alone.

Executive Order 12372 (Intergovernmental Review of Federal Programs). Proposals under this program are not subject to Executive Order 12372.

Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

E.O. 13132 (Federalism). This notice does not contain policies with Federalism implications as defined in Executive Order 13132.

E.O. 12866 (Regulatory Planning and Review). This notice is determined to be not significant under Executive Order 12866.

Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required 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 (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This notice contains collection-of-information requirements subject to the PRA. The use of Form NIST–1101, NIST Construction Grant Program Budget Narrative, NIST–1101A, NIST Construction Grant Program Budget Narrative, and NIST–1102, Letter of Intent Construction Grant Program, have been approved under OMB Control No. 0693–0055; CD–593, U.S. Department of Commerce National Environmental Policy Act (NEPA) Environmental Questionnaire & Checklist has been approved under OMB Control No. 0690–0028; and SF–424, Application for Federal Assistance, SF–424C, Budget Information—Construction Programs, SF–424D, Assurances—Construction Programs, and SF–LLL, Disclosure of Lobbying Activities, have been approved by OMB under the respective control numbers 4040–0004, 4040–0008, 4040–0009, and 0348–0046.

Title, Encumbrances, and Security Interest. Prior to disbursement of any funds under the award, the recipient will be required to furnish evidence, satisfactory in form and substance to NIST that title to real property is vested

in the Recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests. The Recipient will also be required to disclose all encumbrances to NIST, which shall not interfere with the construction, intended use, operation, or maintenance of the project during its estimated useful life.

In addition, grant recipients will be required to execute a security interest or other statement of NIST's interest in the property (building), acceptable to NIST, which must be perfected and placed on record in accordance with local law. This security interest will provide that, for the estimated useful life of the building (20 years), the recipient will not sell, transfer, convey, or mortgage any interest in the real property improved in whole or in part with Federal funds made available under the award, nor shall the recipient use the property for purposes other than the purposes for which the award was made, without the prior written approval of the Grants Officer. Such approval may be withheld until such time as the recipient first pays to NIST the Federal share of the property as provided in 15 CFR Part 14. No funds under the award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to NIST are made.

DoC Pre-Award Notification Requirements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696–01), are applicable to this solicitation.

Employer/Taxpayer Identification Number and Dun and Bradstreet Data Universal Numbering System

On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

National Environmental Policy Act. The Department must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA). General information on compliance with NEPA can be found at the following Web sites: *http://www.nepa.noaa.gov,* and the Council on Environmental Quality's (CEQ) NEPAnet, *http://ceq.hss.doe.gov/nepa/nepanet.htm.*

Consequently, as part of an applicant's proposal, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, safety concerns, locations, site characteristics, surrounding environment, species and habitat that might be affected, construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, impacts to endangered and threatened species, or any social, economic or cultural impacts to the surrounding environment) and in accordance with the required CD–593, U.S. Department of Commerce National Environmental Policy Act (NEPA) Environmental Questionnaire & Checklist.

It is the applicant's responsibility to obtain all necessary Federal, state, and local government permits and approvals where necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. Applicants will also be required to cooperate with the Department in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed project. The failure to do so may be grounds for not making an award to the applicant or enforcement action if an award is eventually made.

Documentation of requests/completion of required environmental authorizations and permits, including the Endangered Species Act, if applicable, should be included in the proposal. Applications will be reviewed to ensure that they contain sufficient information to allow Department staff to conduct a NEPA analysis so that appropriate NEPA documentation, required as part of the proposal, can be submitted to the NIST Grants and Agreements Management Division along with the recommendation for funding for selected applications.

Applicants proposing activities that cannot be covered by a Program Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) or whose activities are not covered under another agency's NEPA compliance procedures that can be analyzed and adopted for use by the Department, will be informed after the technical review stage to determine if NEPA compliance and other requirements can otherwise be expeditiously met so that a project can proceed in a timely manner. If an award is made, no funds shall be expended for construction activities under the award until NIST determines compliance with NEPA.

If additional information is required during the period of the award, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental law compliance information sufficient to enable the Department to assess any impacts that a project may have on the environment.

Reporting. Award Recipients shall provide access to information that is required to assess the project's progress throughout the project life cycle. The following reports are required:

1. *Technical Performance Reports.* Award Recipients shall submit a technical performance report in triplicate (an original and two copies) on a calendar quarter basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. A final technical performance report shall be submitted within 90 days after the expiration date of the award. Two copies of the technical performance reports shall be submitted to the Project Manager and the original report to the NIST Grants Officer. Technical performance reports shall contain information as prescribed in 15 CFR 14.51.

2. Financial Reports. For recipients under this program, Article A.01 of the DoC Financial Assistance Standard Terms and Conditions dated March 2008 is revised as follows:

Award Recipients shall submit a Federal Financial Report (SF–425) in triplicate (an original and two copies) on a calendar quarter basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. A final SF–425 shall be submitted within 90 days after the expiration date of the award. All SF–425s shall be submitted to the NIST Grants Officer.

Reporting requirements are described in the Department of Commerce

Financial Assistance Standard Terms and Conditions dated March, 2008, found on the Internet at: *http://oamweb.osec.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf*.

The references to Financial Reporting Form SF–269 in the DoC Standard Terms & Conditions, A.01 and B.01, are hereby replaced with the SF–425, "Federal Financial Report," as required by the Office of Management and Budget (OMB) (73 FR 61175, October 15, 2008). As authorized under 15 CFR 14.52 and 24.41, the OMB approved SF–425 shall be used in the place of the SF–269 and SF–272 under the uniform administrative requirements and elsewhere under awards in this program where such forms are referenced.

Dated: February 24, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–4286 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–921]

Lightweight Thermal Paper From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: March 2, 2010.

FOR FURTHER INFORMATION CONTACT: David Neubacher, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5823.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2009, the Department of Commerce ("the Department") published a notice announcing the opportunity to request an administrative review of the countervailing duty order on lightweight thermal paper from the People's Republic of China for the period November 20, 2008 through December 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 56573 (November 2, 2009). On November 30, 2009, in accordance with 19 CFR 351.213(b), the Department received a timely request from Appleton Papers, Inc., the petitioner, to conduct an administrative review of Guandong Guanhao High–Tech Co., Ltd.

On December 23, 2009, the Department published a notice of initiation of a countervailing duty administrative review of Guandong Guanhao High–Tech Co., Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009).

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On January 26, 2010, the petitioner withdrew its request for review within the 90-day period, and no other party requested a review. Therefore, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties at the cash deposit rate in effect on the date of entry, for entries during the period November 20, 2008, through December 31, 2008. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 24, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4282 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU76

Fisheries of the South Atlantic and the Gulf of Mexico; Southeastern Data, Assessment, and Review (SEDAR); Spiny Lobster

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

ACTION: Notice of SEDAR Webinars and Workshop for South Atlantic and Gulf of Mexico spiny lobster.

SUMMARY: The SEDAR update of the assessment of the South Atlantic and Gulf of Mexico stock of spiny lobster will consist of a series of webinars and an Update Workshop. This assessment will update the stock assessment conducted under SEDAR 8. See **SUPPLEMENTARY INFORMATION**.

DATES: A Data Webinar will occur on March 23, 2010. Assessment Update Webinars will occur on June 22, July 13, and July 27, 2010. The Update Workshop will take place during August 23–25, 2010, and a follow-up webinar will occur on September 8, 2010. The Update Workshop location will be noticed at a later time. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Webinars may be attended by the public. Those interested in participating should contact Dale Theiling at SEDAR. See **FOR FURTHER INFORMATION CONTACT** to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Dale Theiling, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *dale.theiling@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. A full benchmark assessment conducted under SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop Process and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential

datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Review Workshop Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR conducts updates of benchmark stock assessments previously conducted through the SEDAR program. Update assessments add additional data points to datasets incorporated in the original SEDAR benchmark assessment and run the benchmark assessment model to update population estimates. The spiny lobster update assessment will update the SEDAR 8 benchmark of Southeastern United States spiny lobster, which included both the South Atlantic and Gulf of Mexico. The update process consists of a series of webinars and an update workshop.

Spiny Lobster Update Process Schedule:

March 23, 2010; 10 a.m. - 12 p.m.; SEDAR Data Webinar

An updated assessment data set and associated documentation will be presented and discussed during the Data Webinar. Participants will evaluate updates of data employed or considered in SEDAR 8 providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

June 22, July 13, and July 27, 2010; 10 a.m. - 12 p.m.; SEDAR Assessment Webinars

Using updated datasets adopted during the Data Webinar, participants will employ assessment models used in SEDAR 8 to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

August 23–25, 2010; SEDAR Spiny Lobster Update Workshop

August 23, 2010: 1 p.m. - 8 p.m.; August 24, 2010: 8 a.m. - 8 p.m.; August 25, 2010: 8 a.m. - 1 p.m.

During the Update Workshop assessment analysts will discuss and evaluate decisions made during the Data and Assessment Webinars. Participants will compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to Science and Statistics Committees of the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council. Workshop panelists will document their findings and recommendations in an Assessment Workshop Report.

Special Accommodations

The Update Workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the workshop.

Dated: February 25, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–4299 Filed 3–1–10; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 3, 2010; 2 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 22, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–4028 Filed 3–1–10; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 3, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Civil Penalty Factors—Final Rule

A live webcast of the Meeting can be viewed at *http://www,cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 22, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–4029 Filed 3–1–10; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board

AGENCY: Defense Policy Board, DoD.

ACTION: Notice.

SUMMARY: The Defense Policy Board will meet in closed session on March 18, 2010 from 0730 hrs until 1800 hrs and on March 19, 2010 from 0730 hrs until

1030 hrs at the Pentagon. The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 703–571–9232.

Dated: February 23, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–4296 Filed 3–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, a subcommittee of the Defense Health Board (DHB), will meet on March 11, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on March 11, 2010, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Omni La Mansion Del Rio, 112 College Street, San Antonio, Texas 78205.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

FOR FURTHER INFORMATION CONTACT: Col JoAnne McPherson, Executive Secretary, Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, One Skyline Place, 5205 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–3279, ext 162, *Fax:* (703) 681–3317, *JoAnne.Mcpherson@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Due to internal DoD difficulties, beyond the control of the Defense Health Board or its Designated Federal Officer, the Government was unable to process the **Federal Register** notice for the March 11, 2010, meeting of the Defense Health Board's subcommittee, Department of Defense Task Force on the Prevention of Suicide by Members as required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting

The purpose of the meeting is to gather information pertaining to suicide and suicide prevention programs for members of the Armed Services.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

Agenda

On March 11, 2010, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces will receive briefings from Service Component representatives, the VA, and Service medical training representatives concerning efforts related to suicide and suicide prevention programs.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces meeting March 11, 2010, is open to the public. The public is encouraged to register for the meeting.

Written Statements

Any member of the public wishing to provide input to the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should address the following detail: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (*see* **FOR FURTHER INFORMATION CONTACT**) at any point. However, if the written statement is not received prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, and ensure they are provided to members of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of the meeting or at a future meeting.

The DFO, in consultation with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces.

Dated: February 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–4300 Filed 3–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Availability of a Final General Conformity Determination and Record of Decision for the Middle Harbor Redevelopment Project, Port of Long Beach, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In April 2009, the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) in coordination with the Port of Long Beach (POLB) completed and published a joint Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Middle Harbor Redevelopment Project (Project) in the

POLB, including a Draft General Conformity Determination, for the Federal action associated with the Project. Comments were received on the Final EIS and Draft General Conformity Determination until May 3, 2009. A General Conformity Determination was required because Project construction would require Federal action (*i.e.,* issuance of a Corps permit for work and structures in and over navigable waters and discharges of fill into waters of the U.S.) and not all the Federal action's direct and indirect air emissions would be below specified de minimis thresholds (40 CFR 93.153(b)). On February 23, 2010, the Corps completed its environmental review and made a Final General Conformity Determination, executed the Record of Decision (ROD), and issued a Standard Individual Permit for the Federal action associated with the Project, pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act. The Corps considered and responded to all comments received in making the Final General Conformity Determination, executing the ROD, and issuing the Corps permit. The public can request copies of the Final General Conformity Determination document or the ROD from the Corps at the address listed below, or can view or download the these documents from the Corps' Web site (*http://www.spl.usace.army.mil/regulatory/POLB.htm*).

FOR FURTHER INFORMATION CONTACT: Questions or requests concerning the Final General Conformity Determination or the ROD should be directed to Antal Szijj, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2147.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2010–4274 Filed 3–1–10; 8:45 am]

BILLING CODE 3720–58–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 April 1, 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, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.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 Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that 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: February 25, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Programme For The International Assessment Of Adult Competencies (PIAAC) 2010 Field Test And 2011/2012 Main Study Data Collection.

Frequency: Annually.

Affected Public: Individuals and households.

Reporting and Recordkeeping Hour Burden:

Responses: 6,097.

Burden Hours: 1,858.

Abstract: The National Center for Education Statistics (NCES) seeks OMB approval to survey adults (16–65 years old) for the 2010 administration of the field-test for the Program for the International Assessment of Adult Competencies (PIAAC). PIAAC is coordinated by the Organization for Economic Cooperation and Development (*http://www.oecd.org/*) and sponsored by the U.S. Departments of Education and Labor in the United States. PIAAC is the OECD's new international household study of adults' literacy, numeracy, and problem-solving in technology-rich environments. It will also survey respondents about their education and employment experience and about the skills they use at work. PIAAC builds on previous international literacy assessments: the 2002 Adult Literacy and Lifeskills Survey (ALLS) and the 1994–98 International Adult Literacy Survey (IALS). PIAAC is expected to be on a 10-year cycle. In 2011, 27 countries, including 23 OECD-member countries, plan to participate. The U.S. PIAAC field test data collection will occur between August and November 2010. The main study will occur between September 2011 and March 2012. NCES will seek approval for the full-scale instruments in the fall of 2010.

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 4194. 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 directed to I*CDocketMgr@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. 2010–4314 Filed 3–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants To Reduce Alcohol Abuse; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184A.

DATES:

Applications Available: March 2, 2010.

Deadline for Transmittal of Applications: April 16, 2010.

Deadline for Intergovernmental Review: June 15, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants to local educational agencies (LEAs) to develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 4129 of the Safe and Drug-Free Schools and Communities Act, 20 U.S.C. 7139.

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Alcohol Abuse Reduction.

This priority is: A project must develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

Program Authority: 20 U.S.C. 7139.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The regulations in 34 CFR 299. (c) The notice of eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,311,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000—$450,000.

Estimated Average Size of Awards: $368,000

Estimated Number of Awards: 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, including charter schools that are considered LEAs under State law.

(b) The Secretary limits eligibility under this discretionary grant competition to LEAs that do not currently have an active grant under the Grants to Reduce Alcohol Abuse program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *www.ed.gov/programs/dvpalcoholabuse/index.html.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 2, 2010.

Deadline for Transmittal of Applications: April 16, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 15, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that,

because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Office of Safe and Drug Free Schools at (202) 485–0013.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

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

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are in the application package for this competition.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is rural and low-income status. Applications from rural and low-income applicants will be read and scored separately and up to 25 percent of the available funds will be reserved for awards to these LEAs. The following is a suggested definition of a rural and low-income LEA; however, LEAs that want to be considered as rural and low-income applicants may provide other

supporting evidence of their status as rural and low income.

A rural and low-income LEA is an LEA in which (a) all of the schools served by the LEA are designated with a locale code of 6, 7, or 8 as determined by the Department's National Center for Education Statistics (NCES); and (b) 20 percent or more of the children ages 5 through 17 years served by the LEA are from families with incomes below the poverty line. The Department maintains a list of these LEAs at *www.ed.gov/programs/reaprlisp/eligibility.html.*

Note: Applicants wishing to be considered under this factor must be both rural and low-income

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), three measures have been developed for evaluating the overall effectiveness of the Grants to Reduce Alcohol Abuse program. They are: (1) The percentage of grantees whose target students show a measurable decrease in binge drinking; (2) the percentage of grantees that show a measurable increase in the percentage of target students who believe that alcohol abuse is harmful to their health; and (3) the percentage of grantees that show a measurable increase in the percentage of target students who disapprove of alcohol abuse.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Nicole A. White, U.S. Department of Education, 550 12th Street, SW., room 10002, Potomac Center Plaza, Washington, DC 20202–6450. *Telephone:* (202) 245–7884, or by *e-mail: nicole.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://*www.gpoaccess.gov/nara/index.html.*

Dated: February 24, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools

[FR Doc. 2010–4317 Filed 3–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Agency Report of Motor Vehicle Data, Annual Motor Vehicle Fleet Report, OMB Control Number 1910–1000. This information collection request covers information necessary to prepare and submit annual property reports required by 41 CFR 102 and the Office of Management and Budget.

DATES: Comments regarding this collection must be received on or before April 1, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to:

Helene Mattiello, Industrial Property Management Specialist, MA–632/L'Enfant Plaza Building, U.S. Department of Energy, Washington, DC 20585–1615, *helene.mattiello@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Helene Mattiello, at the above address, or by telephone at (202) 287–1593, or by fax at (202) 287–1656.

The Exchange/Sale report form can be found at the following link: *http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FMR_Bulletin-B-5_attachA_R24T4-k_0Z5RDZ-i34K-pR.doc.*

The Excess Personal Property Furnished to Non-Federal Recipients form can be found at the following link: *http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FMR_Bulletin-B-5_attachB_R24T4-k_0Z5RDZ-i34K-pR.doc.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1000; (2) *Information Collection Request Title:* Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Agency Report of Motor Vehicle Data, Annual Motor Vehicle Fleet Report; (3) *Purpose:* The information being collected is data required in order to submit annual personal property reports as required by 41 CFR 102 and the Office of Management and Budget. (4) *Estimated Number of Respondents:* 176 annually. (5) *Estimated Total Burden Hours:* 2,552. (6) *Number of Collections:* 176. The information collection request contains 27 information and/or recordkeeping requirements.

Statutory Authority: 41 CFR 102–39.75, 41 CFR 102–36.295 and 102–36.300, 41 CFR 102–34.335, OMB Circular A–11 Section 25.5.

Issued in Washington, DC, on February 24, 2010.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

[FR Doc. 2010–4315 Filed 3–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 18, 2010, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Subcommittee Chairs' Comments
- Presentations
- Administrative Issues
  - Recommendation on Heath Elementary School Site Sampling
  - Recommendation on Northwest Plume Optimization
- Public Comments
- Final Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, 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 Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC on February 24, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–4327 Filed 3–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–14–000]

Turtle Bayou Gas Storage Company, LLC; Amended Notice of Intent To Prepare an Environmental Assessment for the Planned Turtle Bayou Natural Gas Storage Project and Request for Comments on Environmental Issues

February 23, 2010.

As previously noticed on November 20, 2009, and amended herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Turtle Bayou Natural Gas Storage Project involving construction and operation of facilities by Turtle Bayou Gas Storage Company, LLC (Turtle Bayou) in Liberty County, Texas. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of a second scoping period (due to pipeline route changes in the project design) the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on March 25, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project, which includes newly identified affected landowners along the revised pipeline route; landowners who would no longer be affected by Turtle Bayou's previous pipeline route; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of

eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Since issuance of our [1] November 20, 2009 notice, Turtle Bayou has changed the preferred location of about 7.6 miles of its planned pipeline (from milepost 4.8 to 12.4). Turtle Bayou's current configuration of the planned facilities was changed to avoid an identified superfund site.

Turtle Bayou plans to construct and operate a new natural gas storage facility in a solution-mined salt dome in Liberty County, Texas. The Turtle Bayou Natural Gas Storage Project would provide about 12.0 billion cubic feet of working gas storage and would be integrated into the regional gas transmission system through interconnects with existing and planned interstate pipelines. According to Turtle Bayou, its project would store natural gas from Gulf Coast producers, liquefied natural gas import terminals, and new gas pipeline projects through interconnects with Natural Gas Pipeline Company of America (NGPA) and Texas Eastern Transmission Company (Texas Eastern). The planned storage facility would provide needed deliverability to end users in the eastern United States. Additionally, Turtle Bayou's planned project would provide its customers with flexibility to contract for varying levels of deliverability by interconnecting with other pipeline systems throughout the region.

The Turtle Bayou Natural Gas Storage Project would consist of the following facilities:

- Two salt storage caverns, wells, and well pads;
- A 17,000-horsepower compressor station;
- Two meter stations and tie-in facilities (one for NGPA and one for Texas Eastern);
- Two sections of 24-inch-diameter natural gas pipeline totaling about 12.4 miles (7.6 and 4.8 miles); and
- Three sections of 18-inch-diameter water and brine pipeline totaling about 1.8 miles (1.6, 0.1, and 0.1 miles).

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the planned facilities would disturb about 333 acres of land for the aboveground facilities and the pipeline. Following construction, about 170 acres would be maintained for permanent operation of the project's facilities (111 acres for storage facilities [including electrical easements] and 59 acres for pipeline facilities); the remaining acreage would be restored and allowed to revert to former uses. The planned pipeline route generally parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before March 25, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing

[1] "We," us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "Documents and Filings" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment.

Becoming an Intervenor

Once Turtle Bayou files its application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's website. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF09–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Further, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Turtle Bayou has established a website for its project at *http://www.turtlebayougasstorage.com* and a toll-free number at (877) 558–4521. The Web site includes a description of the project, frequently asked questions, and other information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4252 Filed 3–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC10–44–000]

Crescent Ridge LLC; Notice of Filing

February 23, 2010.

Take notice that on February 16, 2010, Crescent Ridge LLC filed a supplement to its February 2, 2010 section 203 application.

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 February 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4253 Filed 3–1–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0050, FRL–9120–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of Ambient Air Protocol Gas Verification Participation Survey; EPA ICR No. 2375.01 OMB Control No. 2060-New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to the OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0050, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Docket No. EPA–HQ–OAR–2010–0050, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2010–0050, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0050. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Michael Papp, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–2408; fax: 919–541–1903; e-mail: *papp.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–0050 which is available for on-line viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

(i) Explain your views as clearly as possible and provide specific examples.

(ii) Describe any assumptions that you used.

(iii) Provide copies of any technical information and/or data you used that support your views.

(iv) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(v) Offer alternative ways to improve the collection activity.

(vi) Make sure to submit your comments by the deadline identified under DATES.

(vii) To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To?

Affected entities: Entities potentially affected by this action are state, local,

and tribal governments that are currently operating and maintaining established ambient air quality networks.

Title: Implementation of Ambient Air Protocol Gas Verification Participation Survey

ICR numbers: EPA ICR No. EPA–HQ–OAR–2010–0050, OMB Control No. 2060–New.

ICR status: This ICR is for a new 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 numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR includes ambient air monitoring data reporting and recordkeeping activities associated with the 40 CFR part 58 Appendix A, Ambient Air Quality Surveillance Quality Assurance Regulations. These data and information are collected by state, local, and tribal air quality management agencies and reported to the EPA.

The EPA Ambient Air Quality Monitoring Program's quality assurance requirements in 40 CFR part 58, Appendix A, require: "2.6 Gaseous and Flow Rate Audit Standards. Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for CO, SO_2, NO, and NO_2 must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM), NIST Standard Reference Materials (SRM), and Netherlands Measurement Institute (NMI) Primary Reference Materials (valid as covered by Joint Declaration of Equivalence) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as "EPA Protocol Gas" must participate in the EPA Protocol Gas Verification Program or not use "EPA" in any form of advertising."

These requirements give assurance to end users that all specialty gas producers selling EPA Protocol Gases are participants in a program that provides an independent assessment of the accuracy of their gases' certified concentrations. In 2010, EPA will develop an Ambient Air Protocol Gas Verification Program (AA–PGVP) that will help to ensure that producers selling EPA Protocol Gases participate in the AA–PGVP and will provide end users with information about participating producers and verification results.

Each year, EPA will attempt to compare gas cylinders from every specialty gas producer being used by ambient air monitoring organizations. EPA Regions 2 and 7 have agreed to provide analytical services for verification of 40 cylinders/lab or 80 cylinders total/year. Cylinders will be verified at a pre-determined time each quarter.

In order to make the appropriate selection, EPA needs to know what specialty gas producers are being used by the monitoring organizations. Therefore, EPA needs to survey each primary quality assurance organization every year to collect information on specialty gas producers being used and whether the monitoring organization would like to participate in the verification for the upcoming calendar year.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response with a cost of $21.71 per year. The total number of respondents is assumed to be 211.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 211.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 70.3.

Estimated total annual costs: $4582.00.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 19, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–4308 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0425; FRL–9121–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Portland Cement (40 CFR Part 63, Subpart LLL), EPA ICR Number 1801.08, OMB Control Number 2060–0416

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 1, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2009–0425, to (1) EPA online

using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0425, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Portland Cement (Renewal).

ICR Numbers: EPA ICR Number 1801.08, OMB Control Number 2060–0416.

ICR Status: This ICR is scheduled to expire on April 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart LLL. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 69.56 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Portland cement plants.

Estimated Number of Respondents: 94.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 28,242.

Estimated Total Annual Cost: $4,975,387, which includes $2,656,095 in labor costs, $1,439,200 in annual capital/startup costs, and $880,092 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in burden hours and dollars from the most recently approved ICR renewal (EPA ICR number 1801.07) is due to a 2006 program change in the regulation requiring additional performance testing, monitoring, recordkeeping, and reporting requirements. These amendments would affect any new, modified, or reconstructed sources after December 2, 2005.

There was a decrease in number of responses currently identified in the OMB Inventory of Approved Burdens. This decrease is due to the correction of transpose error in the currently approved burden estimates in ICRAS. Further, the number of responses also decreased due to a decrease in the number of estimated portland cement plants affected by ICR since the last renewal.

The increase in capital/start-up and O&M costs is also due to a 2006 program change in the regulation requiring new monitoring equipment. The THC monitors are a new requirement for new sources since the last ICR renewal. Further, the change in labor costs for industry and EPA is due to the use of more current labor rates.

Dated: February 23, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–4309 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9121–5]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 24–25, 2010 at the Melrose Hotel, 2430 Pennsylvania Ave, NW., Washington, DC, 20037. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet March 24–25, 2010.

ADDRESSES: 2430 Pennsylvania Avenue, NW., Washington, DC 20037

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2191, *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC will meet on Wednesday, March 24 from 8:30 a.m. to 5 p.m. and Thursday from 9 a.m. to 12:30 p.m. Agenda items include EPA's Schools Siting Guidelines, the America's Children and the Environment Report, a presentation from the National Commission on Disasters, and outdoor air monitoring near schools.

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov,* at least 10 days prior to the meeting.

Dated: February 25, 2010.

Martha Berger,

Designated Federal Official.

U.S. Environmental Protection Agency

Children's Health Protection Advisory Committee, Melrose Hotel, Potomac Rooms I, II, and III, 2430 Pennsylvania Avenue Northwest, Washington, DC 20037, (202) 955–6400. Potomac Rooms I, II, and III, March 24 and 25, 2010.

Draft Agenda

Wednesday, March 24

8:30–8:35 *Review Meeting Agenda,*
8:35–9 *Welcome and Introductions,*
9–9:20 *Orientation to Federal Advisory Groups and CHPAC*
9:20–9:50 *Charge to CHPAC*
9:50–10:15 *Highlights of Office of Children's Health Protection Activities*
10:15–10:30 Break
10:30–11:30 *National Commission on Disasters and Children Report*
11:30–12 *Indoor Air Quality*
12 1:30 Lunch
1:30–2:15 *America's Children and the Environment Update*
2:15–3:15 *Presentation of the School Siting Task Group Report*
3:15–3:30 Break
3:30–4:30 *Draft School Siting Task Group Letter to Administrator*
4:30 Public Comment
5 Adjourn

Thursday, March 25

9–9:15 *Check in and Agenda Review*
9:15–9:45 *Rulemaking Gateway Demonstration*
9:45–10:45 *Finalize School Siting Task Group Letter to Administrator*
10:45–11 Break
11–12 *Air Toxics Monitoring Initiative Update*
12–12:30 *Review Discussions, Decisions, and Possible Next Steps*
12:30 Adjourn

[FR Doc. 2010–4305 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9121–4]

Science Advisory Board Staff Office Notification of a Public Teleconference of the Air Quality Modeling Subcommittee of the Advisory Council on Clean Air Compliance Analysis (Council)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Air Quality Modeling Subcommittee (AQMS) of the Advisory Council on Clean Air Compliance Analysis (Council) to finalize its draft advisory report on EPA's air quality modeling work for the Second Section 812 Prospective Benefit-Cost Study of the Clean Air Act.

DATES: The AQMS will conduct a public teleconference on March 15, 2010. The teleconference will begin at 2 p.m. and end by 4 p.m. (Eastern Time).

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO), via telephone at (202) 343–9697 or e-mail at *sanzone.stephanie@epa.gov.* General information about the Council can be found on the EPA Web site at *http://www.epa.gov/advisorycouncilcaa.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the Air Quality Modeling Subcommittee (AQMS) of the Advisory Council on Clean Air Compliance Analysis (Council) will hold a public teleconference to discuss and finalize its draft peer review report on the EPA's air quality modeling and model performance analyses prepared to support the Second Section 812 Benefit-Cost Analysis of the Clean Air Act. The Council was established in 1991 pursuant to the Clean Air Act (CAA) Amendments of 1990 (see 42 U.S.C. 7612) to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under FACA. The AQMS will provide advice through the Council and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Pursuant to Section 812 of the 1990 Clean Air Act Amendments (CAAA), EPA conducts periodic studies to assess benefits and costs of the EPA's regulatory actions under the Clean Air Act. The Council has provided advice on an EPA retrospective study published in 1997 and an EPA prospective study completed in 1999. EPA initiated a second prospective study to evaluate the benefits and costs of EPA Clean Air programs for years 1990–2020. The Council has previously provided advice on the analytical blueprint for this study. EPA's Office of

Air and Radiation (OAR) is now nearing completion of the analytical work for the second prospective study. The AQMS met on February 19, 2010 [**Federal Register** Notice dated January 26, 2010 (75 FR 4070–4071)] to review technical documents pertaining to modeling of air quality for seven emissions scenarios: a 1990 baseline simulation; and simulations for 2000, 2010 and 2020 with and without the CAAA. Materials for the February 19 meeting are available on the Council Web site at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/MeetingCal/962D3C3D233888B0852576 95005098B5?OpenDocument.* The purpose of the March 15 teleconference meeting is to discuss and finalize the AQMS draft advisory report.

Technical Contacts: The Office of Air and Radiation technical contact for the Second Section 812 Benefit-Cost Analysis of the Clean Air Act is Mr. Jim DeMocker at (202) 564–1673 or *democker.jim@epa.gov.*

Availability of Meeting Materials: The AQMS draft advisory report and meeting agenda for the March 2010 teleconference will be posted to the Council Web site (*http://www.epa.gov/advisorycouncilcaa*) prior to the meeting. EPA draft documents provided to the AQMS are available at *http://www.epa.gov/oar/sect812/prospective2.html.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the AQMS to consider on the topics of this advisory activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference meeting will be limited to three minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Ms. Sanzone at the contact information provided above by March 10, 2010, to be placed on the public speaker list for the March 15, 2010 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by March 10, 2010, so that the information can be made available to the AQMS for their consideration prior to the meeting. Written statements should be supplied to Ms. Sanzone in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Sanzone at (202) 343–9697, or via e-mail at *sanzone.stephanie@epa.gov,* preferably at least ten (10) days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 24, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–4311 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9121–1]

Official Release of the MOVES2010 Motor Vehicle Emissions Model for Emissions Inventories in SIPs and Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the Motor Vehicle Emissions Simulator model (MOVES2010) for official use outside of California. MOVES2010 is the state-of-the-art upgrade to EPA's modeling tools for estimating emissions from cars, trucks, motorcycles, and buses, based on analysis of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions.

Today's notice approves the use of MOVES2010 in official State implementation air quality plan (SIP) submissions to EPA and for certain transportation conformity analyses outside of California. This notice starts a two-year grace period before the MOVES2010 emission model is required to be used in new regional emissions analyses for transportation conformity determinations outside of California. EPA is not approving MOVES2010 for project-level transportation conformity hot-spot analyses at this time; the Agency will approve the model for such analyses in the near future in a separate **Federal Register** notice when guidance is finalized.

EPA strongly encourages areas to use the interagency consultation process to examine how MOVES2010 will affect future transportation plan and transportation improvement program (TIP) conformity determinations so, if necessary, SIPs and motor vehicle emissions budgets can be revised with MOVES2010 or transportation plans and TIPs can be revised as appropriate prior to the end of the MOVES2010 conformity grace period. EPA also encourages State and local air agencies to consider how the release of MOVES2010 will affect analyses supporting SIP submissions under development.

DATES: EPA's approval of the MOVES2010 emissions model for SIPs and regional emissions analyses for transportation conformity is effective March 2, 2010. As discussed further below, today's approval also starts a two-year transportation conformity grace period which ends on *March 2, 2012,* after which MOVES2010 is required to be used for new regional emissions analyses for transportation conformity.

FOR FURTHER INFORMATION CONTACT: For technical model questions regarding the official release or use of MOVES2010, please e-mail EPA at *mobile@epa.gov* or call (734) 214–4636. For questions about SIPs, contact Rudy Kapichak at *Kapichak.Rudolph@epa.gov* or (734) 214–4574. For transportation conformity questions, contact Meg Patulski at *Patulski.Meg@epa.gov* or (734) 214–4842.

SUPPLEMENTARY INFORMATION: The contents of this notice are as follows:

I. What Is MOVES2010?
II. SIP Policy for MOVES2010
III. Transportation Conformity Policy for MOVES2010
IV. Future Notice Approving MOVES2010 for Project-Level Conformity Hot-Spot Analyses

Availability of MOVES2010 and Support Materials

Copies of the official version of the MOVES2010 model, along with user guides and supporting documentation, are available on EPA's MOVES Web site: *http://www.epa.gov/otaq/models/moves/index.htm.*

Guidance on how to apply MOVES2010 for SIPs and transportation conformity purposes, including "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009) and "Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity" (EPA–420–B–09–042, December 2009) can be found on the EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

EPA will continue to update this Web site as other MOVES support materials and guidance are developed.

Individuals who wish to receive EPA announcements related to the MOVES2010 model should subscribe to the EPA–MOBILENEWS e-mail listserver. To subscribe to the EPA–MOBILENEWS listserver, send a blank e-mail to EPA at *join-EPA-MOBILENEWS@lists.epa.gov.* Your e-mail address will then be added to the list of subscribers and a confirmation message will be sent to your e-mail address. Whenever a message is posted to the EPA–MOBILENEWS listserver by the listserver owner (the Assessment and Standards Division of EPA's Office of Transportation and Air Quality), a copy of that message will be sent to every person who has subscribed. You can remove yourself from the list by sending a blank e-mail to EPA at *leave-EPA-MOBILENEWS@lists.epa.gov.* This e-mail must be sent from the same e-mail address that you used to subscribe. For more information about the EPA–MOBILENEWS listserver, visit EPA's Web site at *http://www.epa.gov/otaq/models/mobilelist.htm.*

I. What Is MOVES2010?

MOVES2010 is the state-of-the-art upgrade to EPA's modeling tools for estimating emissions from highway vehicles, based on analysis of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. Today's notice approves MOVES2010 as EPA's official motor vehicle emissions factor model for estimating volatile organic compounds (VOCs), nitrogen oxides (NO_X), carbon monoxide (CO), direct particulate matter (PM_{10} and $PM_{2.5}$) and other precursors from cars, trucks, buses, and motorcycles by State and local agencies for SIP purposes and regional emissions analyses for transportation conformity outside of California. For these purposes, MOVES2010 replaces the previous emissions model, MOBILE6.2, which was released in 2004 (69 FR 28830).[1]

MOVES2010 improves upon MOBILE6.2 in several key respects. For example, MOVES2010 is based on a review of the vast amount of in-use vehicle data collected and analyzed since the release of MOBILE6.2, including millions of emissions measurements from light-duty vehicles. Analysis of this data has enhanced EPA's understanding of how on-road mobile sources contribute to emissions inventories, and has also improved the agency's understanding of the relative effectiveness of various control strategies. MOVES2010 has a database-centered design that allows users much greater flexibility in organizing input and output data. This structure also allows EPA to update emissions data incorporated in MOVES2010 more easily.

MOVES2010 includes the capability to estimate vehicle exhaust and evaporative emissions as well as brake wear and tire wear emissions for criteria pollutants and precursors. However, MOVES2010 does not include the capability to estimate emissions of re-entrained road dust. To estimate emissions from re-entrained road dust, practitioners should continue to use the latest approved methodologies.[2]

II. SIP Policy for MOVES2010

EPA has articulated its policy regarding the use of MOVES2010 in SIP development in its "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009). Today's notice highlights certain aspects of the guidance, but State and local governments should refer to the guidance for more detailed information on how and when to use MOVES2010 in reasonable further progress SIPs, attainment demonstrations, maintenance plans, inventory updates, and other SIP submission requirements.

Although MOVES2010 should be used in SIP development as expeditiously as possible, EPA also recognizes the time and effort that States have already undertaken in SIP development using MOBILE6.2. SIPs that EPA has already approved are not required to be revised solely based on existence of the new model. States that have already submitted SIPs or will submit SIPs shortly after EPA's approval of MOVES2010 are not required to revise these SIPs simply because a new motor vehicle emissions model is now available. States can choose to use MOVES2010 in these SIPs, for example, if it is determined that it is appropriate to update motor vehicle emissions budgets ("budgets") with the MOVES2010 model for future conformity determinations. However, EPA does not believe that a State's use of MOBILE6.2 should be an obstacle to EPA approval for SIPs that have been or will soon be submitted, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.,* attainment modeling for an attainment SIP has already been completed with MOBILE6.2). It would be unreasonable in such cases to require States to revise these SIPs with MOVES2010 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner.

States should use MOVES2010 where SIP development is in its initial stages or hasn't progressed far enough along that switching to MOVES2010 would create a significantly adverse impact on State resources. For example, States (except California) that will be developing on-road mobile source inventories for 2006 24-hour $PM_{2.5}$ NAAQS SIPs should base those inventories on MOVES2010. EPA designated nonattainment areas for this NAAQS on November 13, 2009 (74 FR 58688), which should give State and local agencies time to incorporate MOVES2010 into SIP submissions for this NAAQS. MOVES2010 should be incorporated into these and other SIPs, as appropriate, since MOVES2010 emissions estimates are based on the best information currently available, as required by Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

III. Transportation Conformity Policy for MOVES2010

EPA is establishing a two-year grace period before MOVES2010 is required for new transportation plan and TIP conformity determinations and regional emissions analyses. This grace period begins today and ends March 2, 2012. The remainder of this section describes how the transportation conformity grace period was determined and summarizes how it will be implemented, including those circumstances when the grace period could be shorter than two years. However, for complete explanations of how MOVES2010 is to be implemented for transportation conformity, including details about using MOVES2010 during the grace period, refer to "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009). EPA coordinated closely with the U.S.

[1] Today's notice does not affect emissions model requirements within California, where the EMFAC2007 emissions model is currently approved for SIP purposes and for regional emissions analyses and CO hot-spot analyses for transportation conformity (73 FR 3464).

[2] *See* EPA's notice of availability published in the **Federal Register** on May 19, 2004, 69 FR 28830–28832. Also see EPA's memoranda: "Policy Guidance on the Use of the November 1, 2006, Updated to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity," August 2, 2007; and "Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-entrained Road Dust for SIP Development and Transportation Conformity," February 24, 2004. These documents are available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

Department of Transportation (DOT) in the establishment of the grace period.

A. Length of Conformity Grace Period

Transportation conformity is a Clean Air Act requirement to ensure that Federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations; worsen existing violations; or delay timely attainment of the national ambient air quality standards or any interim milestone. Transportation conformity applies in nonattainment and maintenance areas for transportation-related pollutants: ozone, carbon monoxide (CO), $PM_{2.5}$, PM_{10}, and nitrogen dioxide.

The transportation conformity rule (40 CFR parts 51 and 93) requires that conformity determinations be based on the latest motor vehicle emissions model approved by EPA. Section 176(c)(1) of the Clean Air Act states that "* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *." When EPA approves a new emissions model such as MOVES2010, a grace period is established before the model is required for conformity analyses. The conformity rule provides for a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)).

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (58 FR 62211):

> EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs [metropolitan planning organizations] must use the model's new emissions factors.

In consultation with DOT, EPA must consider many factors when establishing a grace period for conformity determinations, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111(b)(2)).

Upon consideration of all of these factors, EPA is establishing a two-year grace period, which begins today and ends on March 2, 2012, before MOVES2010 is required to be used for regional transportation conformity purposes. During this grace period, areas should use the interagency consultation process to examine the impact of using MOVES2010 in their future transportation plan and TIP conformity determinations and regional emissions analyses.

B. Circumstances When Grace Period Will Be Shorter Than Two Years

The grace period will be shorter than two years for a given pollutant if an area revises its SIP and budgets with MOVES2010, and such budgets become applicable for regional conformity purposes prior to the end of the two-year grace period. In this case, the new regional emissions analysis must use MOVES2010 if the conformity determination is based on a MOVES2010-based budget.

Areas that are designated nonattainment or maintenance for multiple pollutants may rely on both MOVES2010 and MOBILE6.2 to determine conformity for different pollutants during the grace period. For example, if an area revises a previously submitted (but not approved) MOBILE6.2-based PM_{10} SIP with MOVES2010 and EPA finds these revised MOVES2010 budgets adequate for conformity, such budgets would apply for conformity on the effective date of the **Federal Register** notice announcing EPA's adequacy finding. In this example, if an area was in nonattainment for PM_{10} and ozone, the MOVES2010 grace period would end for PM_{10} once EPA found the new MOVES2010-based SIP budgets adequate. However, MOBILE6.2 could continue to be used for ozone conformity determinations until the end of the MOVES2010 grace period.[3] EPA Regional Offices should be consulted for questions regarding such situations in multi-pollutant areas.

In addition, if an area revises a previously approved SIP using MOVES2010, the revised MOVES2010 budgets would be used for conformity purposes once EPA approves the MOVES2010 SIP revision, in most cases. In general, submitted SIPs cannot supersede approved budgets until they are approved. However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past, such as during the transition from MOBILE5 to MOBILE6. In such cases, the MOVES2010-based budgets would be used for conformity purposes once they have been found adequate, if requested by the State in its SIP submission and specified in EPA's SIP approval. States should consult with their EPA Regional Office to determine if this flexibility applies to their situation.

C. Use of MOVES2010 During the Grace Period

During the conformity grace period, areas should use the interagency consultation process to examine how MOVES2010 will impact their future transportation plan and TIP conformity determinations and any regional emissions analyses. Areas should carefully consider whether the SIP and budgets should be revised with MOVES2010 or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

Regional emissions analyses that are started during the grace period can use either MOBILE6.2 or MOVES2010. When the grace period ends on March 2, 2012, MOVES2010 will become the only approved motor vehicle emissions model for regional emissions analyses for transportation conformity in States other than California. In general, this means that all new transportation plan and TIP conformity determinations started after the end of the grace period must be based on MOVES2010, even if the SIP is based on MOBILE6.2.

Finally, the conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period. Analyses that begin before or during the grace period may continue to rely on MOBILE6.2. The interagency consultation process should be used if it is unclear if a MOBILE6.2-based analysis was begun before the end of the grace period. If you have questions about which model should be used in your conformity determination, you can also consult with your EPA Regional Office.

IV. Future Notice Approving MOVES2010 for Project-level Conformity Hot-spot Analyses

Today's notice does not approve MOVES2010 for use in transportation conformity hot-spot analyses in $PM_{2.5}$, PM_{10}, and CO nonattainment and

[3] In this example, such an area would use MOVES2010 to develop a regional emissions analysis for comparison to the revised MOVES2010-based budgets (*e.g.*, PM_{10} and NOx budgets). The regional emissions analysis for ozone could be based on MOBILE6.2 for the VOC and NOx budgets in the ozone SIP for the remainder of the conformity grace period.

maintenance areas.[4] EPA will approve MOVES2010 for these purposes, and establish a separate two-year conformity grace period, in a subsequent **Federal Register** notice. Details on how EPA intends to implement MOVES2010 for quantitative CO, $PM_{2.5}$, and PM_{10} hot-spot analyses can be found in "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–042, December 2009).

Dated: February 24, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–4312 Filed 3–1–10; 8:45 am]

BILLING CODE 6560–50–P

[4] In CO nonattainment and maintenance areas, a hot-spot analysis is required for all non-exempt projects, with quantitative hot-spot analyses being required for larger, congested intersections and other projects (40 CFR 93.123(a)(1)). In addition, the conformity rule requires that a quantitative PM_{10} or $PM_{2.5}$ hot-spot analysis be completed for certain projects of local air quality concern once EPA releases modeling guidance and announces in the **Federal Register** that the PM_{10} and $PM_{2.5}$ quantitative hot-spot analysis requirements are in effect (40 CFR 93.123(b)). In coordination with DOT, EPA is currently preparing guidance on how to conduct quantitative $PM_{2.5}$ and PM_{10} hot-spot modeling to implement this requirement.

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Friday, March 12, 2010 beginning at 2:30 p.m. The meeting will be held in the Palladian Room at the Onmi Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Agenda: Agenda items include a briefing on the status of the 2010 Advisory Committee's Subcommittees and the challenges for 2010.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to March 3, 2010, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, *Voice:* (202) 565–3232 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Jonathan Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–4208 Filed 3–1–10; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 11, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 24, 2010

B. New Business

- Director Elections—Final Rule

C. Reports

- Office of Management Services Quarterly Report

Dated: February 25, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–4348 Filed 2–26–10; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 17, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Anthony Jennings Roy, III, Marksville, Louisiana; to retain voting shares of Mansura Bancshares, Inc., Mansura, Louisiana, and thereby indirectly retain voting shares of The Cottonport Bank, Cottonport, Louisiana.

Board of Governors of the Federal Reserve System, February 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–4225 Filed 3–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Platte Valley Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Platte Valley Bank, both of North Bend, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Franklin Resources, Inc., San Mateo, California; to retain 9.53 percent of the voting shares of West Coast Bancorp, and thereby indirectly retain voting shares of West Coast Bank, both of Lake Oswego, Oregon.

Board of Governors of the Federal Reserve System, February 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–4227 Filed 3–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northwest Financial Corp., Arnolds Park, Iowa; to engage *de novo* through its subsidiary, Northwest Wealth Management, LLC, Arnolds Park, Iowa, in investment advisory and transactional activities, pursuant to sections 225.28(b)(6)(i); (b)(6)(ii); b)(6)(v); (b)(7)(i); (b)(7)(ii) and (b)(9)(ii), all of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–4226 Filed 3–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Hearing Schedule; Passenger Vessel Financial Responsibility

The Commission has established the following allotment of time and order of presentation for the hearing concerning the Commission's Passenger Vessel Financial Responsibility Program. The hearing will convene at 10 a.m., March 3, 2010, in the Commission's Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC 20573. In the event that additional time is needed to hear all participants and allow presenters to field questions from the Commission, an afternoon session will be convened.

The due date for submitting the original and 15 copies of participant's prepared hearing statement is Friday, February 26, 2010. All written submissions, except for confidential business information, will be available for public inspection.

Company	Participant(s)	Time allotment (in minutes)
American Cruise Lines Inc.	Charles A. Robertson, Chairman & Chief Executive Officer	15
Carnival Corporation & PLC	David Bernstein, Senior Vice President & Chief Financial Officer.	15
Crystal Cruises, Inc.	Ann G. Miller, Law Offices of Ann G. Miller	15
Cruise Lines International Association	Terry L. Dale, President and CEO, J. Michael Cavanaugh, Holland & Knight LLP.	15
Passenger Vessel Association	Ed Welch, Legislative Director	15

Karen V. Gregory,
Secretary.
[FR Doc. 2010–4202 Filed 3–1–10; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Advisory Committee Information Hotline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have revised the Advisory Committee Information Hotline (the hotline). The hotline provides the public with access to the most current information available on FDA advisory committee meetings. This notice supersedes all previously published announcements of FDA's Advisory Committee Information Hotline.

FOR FURTHER INFORMATION CONTACT: Michael F. Ortwerth, Director, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The Advisory Committee Information Hotline can be accessed by dialing 1–800–741–8138 or 301–443–0572. The advisory committee meeting information and information updates can also be accessed via FDA's Advisory Committee Internet site at *http://www.fda.gov/AdvisoryCommittees/default.htm*.

Each advisory committee is assigned a 10-digit number. This 10-digit number will appear in each individual notice of meeting. The public can obtain information about a particular advisory committee meeting by using the committee's 10-digit number. Information on the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made. The following is a list of each advisory committee's 10-digit number to be used when accessing the hotline. The list has been updated to add the newly established advisory committee in the Center for Tobacco called the Tobacco Products Scientific Advisory Committee.

Advisory Committee	10-Digit Access Number
OFFICE OF THE COMMISSIONER	
Pediatric Advisory Committee	8732310001
Risk Communication Advisory Committee	8732112560
Science Board to the FDA	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	3014512388
Blood Products Advisory Committee	3014519516
Cellular, Tissue & Gene Therapies Advisory Committee	3014512389
Transmissible Spongiform Encephalopathies Advisory Committee	3014512392
Vaccines and Related Biological Products Advisory Committee	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Life Support Drugs Advisory Committee	3014512529
Anti-Infective Drugs Advisory Committee	3014512530
Antiviral Drugs Advisory Committee	3014512531
Arthritis Advisory Committee	3014512532
Cardiovascular and Renal Drugs Advisory Committee	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	3014512534
Drug Safety and Risk Management Advisory Committee	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	3014512536
Gastrointestinal Drugs Advisory Committee	3014512538
Nonprescription Drugs Advisory Committee	3014512541
Oncologic Drugs Advisory Committee	3014512542
Peripheral and Central Nervous System Drugs Advisory Committee	3014512543
Pharmaceutical Science & Clinical Pharmacology, Advisory Committee for (formerly Advisory Committee for Pharmaceutical Science)	3014512539

Advisory Committee	10-Digit Access Number
Psychopharmacologic Drugs Advisory Committee	3014512544
Pulmonary-Allergy Drugs Advisory Committee	3014512545
Reproductive Health Drugs, Advisory Committee for	3014512537
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	3014510564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	3014512398
Medical Devices Advisory Committee comprised of 18 panels)	
Anesthesiology and Respiratory Therapy Devices Panel	3014512624
Circulatory System Devices Panel	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	3014512514
Dental Products Panel	3014512518
Ear, Nose, and Throat Devices Panel	3014512522
Gastroenterology-Urology Devices Panel	3014512523
General and Plastic Surgery Devices Panel	3014512519
General Hospital and Personal Use Devices Panel	3014512520
Hematology and Pathology Devices Panel	3014512515
Immunology Devices Panel	3014512516
Medical Devices Dispute Resolution Panel	3014510232
Microbiology Devices Panel	3014512517
Molecular and Clinical Genetics Panel	3014510231
Neurological Devices Panel	3014512513
Obstetrics-Gynecology Devices	3014512524
Ophthalmic Devices Panel	3014512396
Orthopaedic and Rehabilitation Devices Panel	3014512521
Radiological Devices Panel	3014512526
National Mammography Quality Assurance Advisory Committee	3014512397
Technical Electronic Product Radiation Safety Standards Committee	3014512399
CENTER FOR TOBACCO	
Tobacco Products Scientific Advisory Committee	8732110002
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	3014512548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH (NCTR)	
Science Advisory Board to NCTR	3014512559

The hotline will provide the most recent information available on upcoming advisory committee meetings, guidance for making an oral presentation during the open public hearing portion of a meeting, and procedures on obtaining copies of transcripts of advisory committee meetings. Because the hotline will communicate the most current information available about any particular advisory committee meeting, this system will provide interested parties with timely and equal access to such information. The hotline should

also conserve agency resources by reducing the current volume of inquiries individual FDA offices and employees must handle concerning advisory committee schedules and procedures.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 24, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4258 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Reinstatement of OMB No. 0925–0601/exp. 02/28/2010, Request for Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a reinstatement of approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 25, 2009, page 48973 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Proposed Collection: Title: Request for Human Embryonic Stem Cell Line to be Approved for Use in NIH Funded Research. *Type of Information Collection Request:* Revision, OMB 0925–0601, Expiration Date 02/28/2010, Form Number: NIH 2890. *Need and Use of Information Collection:* The form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. *Frequency of response:* Applicants may submit applications at any time; this request is a one-time submission. *Affected Public:* Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 160,135; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 14; and *Estimated Total Annual Burden Hours Requested:* 2,251,500. The estimated annualized cost to respondents is $78,802,500.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or E-mail your request, including your address to: *curriem@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 25, 2010.

Mikia Currie,

Office of Policy for Extramural Research Administration, OD, NIH.

[FR Doc. 2010–4301 Filed 3–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of Adolescent Pregnancy Prevention Approaches—Baseline Data Collection.

OMB No.: ICRAS: 0970–0360.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA). PPA is being undertaken to expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. Program impacts will be estimated using a random assignment design, involving random assignment at the school, individual, or other level, depending on the program setting. The findings of the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

This proposed information collection activity focuses on collecting baseline data from a self-administered questionnaire which will be used to perform meaningful analysis to determine significant program effects. Through a survey instrument, respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy. As appropriate to each program being evaluated, youth records, performance, and program participation data will also be collected.

Respondents: The data will be collected through private, self-administered questionnaires completed by study participants, *i.e.* adolescents assigned to a select school or community teen pregnancy prevention program or a control group. Surveys will be distributed and collected by trained professional staff. Youth school records, performance, and program participation data will also be collected from participating schools and organizations, as appropriate to the site.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Baseline Instrument	3,600	1	.5	1,800
School Records, Performance, and Program Participation Data Collection	8	1	8	64

Estimated Total Annual Burden Hours: 1,864.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment

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

Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 23, 2010.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2010–4209 Filed 3–1–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Oncologic 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: Oncologic 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 March 22, 2010, from 8 a.m. to 5 p.m. This meeting is a reschedule of a postponed meeting originally announced in the **Federal Register** of December 17, 2009 (74 FR 66986) to take place on February 10, 2010.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Nicole Vesely, 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, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. 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: During the morning session of March 22, 2010, the committee will discuss new drug application (NDA) 022–481, proposed trade name PIXUVRI (pixantrone dimaleate) injection, by Cell Therapeutics, Inc. The proposed indication (use) for this product is as a single agent treatment for patients with recurring or refractory (difficult to treat), aggressive Non-Hodgkin's Lymphoma who have received two or more prior lines of therapy.

During the afternoon session, the committee will discuss NDA 022–374, proposed trade name OMAPRO (omacetaxine mepesuccinate) for injection, by ChemGenex Pharmaceuticals. The proposed indication (use) for this product is for the treatment of adults with chronic myeloid leukemia bearing a genetic alteration known as the Bcr-Abl T315I mutation, and who have failed prior therapy with the drug imatinib.

Due to the postponement of the February 10, 2010, Oncologic Drugs Advisory Committee meeting because of severe weather conditions and the urgency to reschedule this meeting, FDA regrets that it was unable to publish this notice 15 days prior to the March 22, 2010, Oncologic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Oncologic Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Background materials from the originally scheduled February 10, 2010, Oncologic Drugs Advisory Committee meeting are currently available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link. Should any additional background materials become available, they will be posted 2 days before the March 22, 2010, meeting at this same Web site.

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 March 17, 2010. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 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 March 12, 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 March 15, 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 Nicole Vesely 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: February 24, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4261 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pulmonary-Allergy 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: Pulmonary-Allergy 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 April 7, 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 telephone 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 3014512545. 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 April 7, 2010, the committee will discuss new drug application (NDA) 22–522, roflumilast (DAXAS), Forest Research Institute, for the maintenance treatment of chronic obstructive pulmonary disease associated with chronic bronchitis in patients at risk of exacerbations (worsening symptoms).

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 April 1, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 24, 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 March 25, 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: February 24, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4262 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Web-Enabled Cognitive/Neuropsychological Evaluation System (4411).

Date: March 30, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4032 Filed 3–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of Collaborative Minority Alcohol Research Development (U54).

Date: April 6, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch, Office of Extramural Activities, National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5635 Fishers Lane, Room 2085, Rockville, MD 20852.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93101, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: February 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4212 Filed 3–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Epilepsy Clinical Trial.

Date: March 11, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; 2010 EUREKA Review.

Date: March 24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Ave., NW., Washington, DC 20009.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4211 Filed 3–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; Loan Repayment Program for Health Disparities Research—Panel 1.

Date: March 18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard 800, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov.*

Dated: February 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4210 Filed 3–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Tobacco Products Scientific 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: Tobacco Products Scientific 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 March 30 and 31, 2010, from 8:30 a.m. to 5 p.m.

Location: National Transportation Safety Board (NTSB) Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594 (at Metro's L'Enfant Plaza station; parking is limited and public transportation is recommended.)

Contact Person: Cristi Stark, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3992, e-mail: Cristi.Stark@fda.hhs.gov or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732110002. 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 March 30, 2010, the Tobacco Products Scientific Advisory Committee will cover the following two topics: (Topic 1) Receive presentations on the background and overview of the FDA Center for Tobacco Products, the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act), and the Tobacco Products Scientific Advisory Committee; and (Topic 2) receive presentations on and discuss the published literature on menthol as it relates to the demographics of users, preferential use by persons initiating tobacco use, the health effects of menthol in cigarettes, the effects of menthol on addiction and cessation, marketing and consumer perceptions about menthol cigarettes, the sensory qualities of menthol cigarettes, and the effects of menthol on how cigarettes are smoked. On March 31, 2010, the Committee will continue the presentations and discussions of topic 2; and also receive preliminary information about topics planned for discussion at future meetings, including an action plan designed to ensure the enforcement of restrictions required by the Tobacco Control Act on the advertising and promotion of menthol and other cigarettes to youth, and the establishment of a list of harmful and potentially harmful tobacco product constituents, including smoke constituents. These discussions are preliminary to the preparation of the Tobacco Products Scientific Advisory Committee's required report to the Secretary of Health and Human Services regarding the impact of use of menthol in cigarettes on the public's health. A second meeting of the Tobacco Products Scientific Advisory Committee, focusing on tobacco industry research and documents related to menthol and cigarettes, is planned for summer 2010.

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 subissions may be made to the contact person on or before March 22, 2010. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on March 31, 2010. 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 March 12, 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 March 15, 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 Cristi Stark 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: February 24, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4195 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 23, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Tracy Phillips, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6150, *Tracy.Phillips@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. 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 March 23, 2010, the committee will discuss and make recommendations on issues relevant to FDA's reevaluation of the ReGen Collagen Scaffold (CS) device (marketed as the Menaflex®), which FDA cleared in K082079 on December 18, 2008, sponsored by ReGen Biologics, Inc. The indications for use statement for this device states that the device is intended for use in surgical procedures for the reinforcement and repair of soft tissue injuries of the medial meniscus. In repairing and reinforcing medial meniscal defects, the patient must have an intact meniscal rim and anterior and posterior horns for attachment of the mesh. In addition, the surgically prepared site for the CS must extend at least into the red/white zone of the meniscus to provide sufficient vascularization. The CS reinforces soft tissue and provides a resorbable scaffold that is replaced by the patient's own soft tissue. The CS is not a prosthetic device and is not intended to replace normal body structure.

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 views, orally or in writing, on issues pending before the committee. These views may be submitted in writing to the contact person on or before March 16, 2010. Oral presentations from the public will be scheduled at approximately 1 p.m., immediately following lunch. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the 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 March 8, 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 March 9, 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 AnnMarie Williams, at 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 24, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4260 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Impact of Japanese Encephalitis Vaccination in Cambodia, Funding Opportunity Announcement (FOA) CK10–003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–2 p.m., May 3, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Impact of Japanese Encephalitis Vaccination in Cambodia, FOA CK10–003."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 24, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–4288 Filed 3–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: African Growth and Opportunity Act Certificate of Origin

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0082.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent

burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin (AGOA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 3, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The information collected is used to verify eligibility for duty preferences under the provisions of AGOA. It is provided for under 19 CFR 10.214, 10.215, and 10.216. Specifically, this program provides duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from the countries of sub-Saharan Africa.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 375.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 8,925.

Dated: February 25, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–4287 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3308–EM; Docket ID FEMA–2010–0002]

Oklahoma; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Oklahoma (FEMA–3308–EM), dated January, 30, 2010, and related determinations.

DATES: *Effective Date:* January, 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective January, 30, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–4223 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1874–DR; Docket ID FEMA–2010–0002]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1874–DR), dated February 16, 2010, and related determinations.

DATES: *Effective Date:* February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 16, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from a severe winter storm and snowstorm during the period of December 18–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act").

Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The counties of Albemarle, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Botetourt, Buchanan, Caroline, Culpeper, Dickenson, Fairfax, Grayson, Greene, Hanover, Highland, Lee, Louisa, Madison, Montgomery, Nelson, Orange, Page, Prince William, Rockbridge, Russell, Scott, Spotsylvania, Stafford, and Wise and the independent cities of Alexandria, Charlottesville, Fairfax, Falls Church, Manassas, Manassas Park, Norton, Staunton, and Waynesboro for Public Assistance.

The counties of Albemarle, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Botetourt, Caroline, Fairfax, Grayson, Greene, Hanover, Highland, Louisa, Madison, Montgomery, Nelson, Orange, Page, Prince William, Rockbridge, Spotsylvania, and Stafford and the independent cities of Alexandria, Charlottesville, Fairfax, Falls Church, Manassas, Manassas Park, Staunton, and Waynesboro for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All jurisdictions within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–4221 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1873–DR; Docket ID FEMA–2010–0002]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1873–DR), dated February 5, 2010, and related determinations.

DATES: *Effective Date:* February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 5, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a snowstorm during the period of December 19–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen M. DeBlasio Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Atlantic, Burlington, Camden, Cumberland, Gloucester, Ocean, and Salem Counties for Public Assistance.

Atlantic, Burlington, Camden, Cumberland, Gloucester, Ocean, and Salem Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–4222 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1875–DR; Docket ID FEMA–2010–0002]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1875–DR), dated February 19, 2010, and related determinations.

DATES: *Effective Date:* February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 19, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from a severe winter storm and snowstorm during the period of December 18–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program in the designated areas. You are further authorized to provide snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

The counties of Baltimore, Caroline, Cecil, Harford, Howard, Kent, Montgomery, and Queen Anne's for emergency protective measures, (Category B) under the Public Assistance program.

The counties of Baltimore, Caroline, Cecil, Harford, Howard, Kent, Montgomery, and Queen Anne's for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–4220 Filed 3–1–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) will meet in Philadelphia, PA to discuss various issues to improve oil spill prevention and response strategies for the Delaware River and Bay. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, March 17, 2010, from 10 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material, requests to make oral presentations, and requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 15, 2010.

ADDRESSES: The Committee will meet at Coast Guard Sector Delaware Bay, 1 Washington Ave., Philadelphia, PA 19147. Send written material and requests to make oral presentations to Gerald Conrad, Liaison to the Designated Federal Officer (DFO) of the DRBOSAC, at the address above. This notice and any documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed online, at *http://www.regulations.gov*, using docket number USCG–2008–0333.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, Liaison to the DFO of the DRBOSAC, telephone 215–271–4824.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

The agenda for the March 17 meeting is as follows:

(1) Opening comments.
(2) Administrative announcements.
(3) Introductions.
(4) Pre-approved presentations from the public.
(5) Debriefs from each DRBOSAC Sub-committee.
(6) Public comments.
(7) Committee recommendation(s) discussion.
(8) Future Committee business.
(9) Closing.

More information and detail on the meeting will be available at the committee Web site, located at *https://homeport.uscg.mil/drbosac.* Additional detail may be added to the agenda up to March 15, 2010.

Procedural

This meeting is open to the public. All persons entering the building will have to present identification and may be subject to screening. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. Members of the public may seek pre-approval for their oral presentations by contacting the Coast Guard no later than March 15, 2010. The public may file written statements with the committee; written

material should reach the Coast Guard no later than March 15, 2010. If you would like a copy of your material distributed to each member of the committee, please submit 35 copies to the Liaison to the DFO no later than March 15, 2010, and indicate that the material is to be distributed to committee members at the March 17, 2010 meeting.

Please register your attendance with the Liaison to the DFO no later than March 15, 2010.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: February 23, 2010.

Meredith L. Austin,

Captain, U.S. Coast Guard, Commander, Sector Delaware Bay, Designated Federal Officer.

[FR Doc. 2010–4363 Filed 2–26–10; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–03]

Notice of Proposed Information Collection for Public Comment; Public Housing Annual Contributions Contract

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement 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:* May 3, 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: Leroy McKinney, Jr., 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 Mr. McKinney at *Leroy.McKinneJr@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 202–400–3374, (this is not a toll-free number).

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).

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 Housing Annual Contributions Contract.

OMB Control Number: 2577–NEW (Pending).

Description of the need for the information and proposed use: Section 5 of the United States Housing Act of 1937 (Pub. L. 75–412, 50 Stat. 888) permits the Secretary of HUD to make annual contributions to public housing agencies (PHAs) to achieve and maintain the lower income character of public housing projects. The Secretary is required to embody the provisions for such annual contributions in a contract guaranteeing payment. Applicable regulations are 24 CFR 941 for public housing development and 24 CFR 969 for continued operation of low-income housing after completion of debt service.

Agency form numbers, if applicable: HUD–51999, HUD–52190A, HUD–52190B, HUD–52840A, HUD–53012A, HUD–5301B.

Members of affected public: Business or other for-profit, State, Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of annual respondents is 625 and the total annual reporting burden is 745 hours.

Status of the proposed information collection: This is a request for a new collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 23, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives .

[FR Doc. 2010–4289 Filed 3–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8103–63, AA–8103–65, F–21902–06, F–21903–54, F–21903–55, F–21903–56; LLAK–96400–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Holy Cross and Huslia, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 7 N., R. 13 E.,
Secs. 1 to 33, inclusive.
Containing approximately 16,987 acres.

T. 8 N., R. 13 E.,
Sec. 7;
Secs. 17 to 22, inclusive;
Secs. 27 to 34, inclusive.
Containing approximately 7,580 acres.

T. 7 N., R. 14 E.,
Secs. 4 to 18, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 12,434 acres.

T. 7 N., R. 15 E.,
Secs. 16 to 36, inclusive.
Containing approximately 9,831 acres.

Seward Meridian, Alaska

T. 25 N., R. 53 W.,

Secs. 23 to 26, inclusive;
Secs. 35 and 36.

Containing approximately 3,816 acres.

T. 24 N., R. 54 W.,
Secs. 11 to 23, inclusive.

Containing approximately 7,589 acres.
Aggregating approximately 58,236 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 1, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–4302 Filed 3–1–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 10–08807; MO# 4500012336; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice:

The plat, representing the survey of a portion of the south boundary and a portion of the subdivisional lines of Township 5 North, Range 57 East, Mount Diablo Meridian, Nevada, under Group No. 870, was accepted February 16, 2010.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, these lands are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plat of Survey described in paragraph 1, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in order of filing.

3. The above-listed survey is now the basic record for describing the lands for all authorized purposes. This survey has been placed in the open files in the BLM Nevada State Office and is available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: February 23, 2010.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2010–4272 Filed 3–1–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definitions of "sacred objects" and "objects of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations in this notice.

The 10 cultural items are 4 corn husk face masks and 6 false face masks. An assessment of these 10 cultural items was made by Peabody Museum staff in consultation with representatives of the Haudenosaunee Confederacy.

In 1905, Lewis H. Farlow purchased a false face mask from Grace Nicholson, a dealer, and donated it to the Peabody Museum. Museum documentation states the object is from New York, and dates the object to the late 19th century. The face is described in the museum ledger as "Iroquois."

In 1906, Lewis H. Farlow purchased a false face mask from Grace Nicholson, a dealer, and donated it to the Peabody Museum. Museum documentation dates the object to the late 19th century. The face is described in the museum ledger as "Iroquois."

In 1995, the Peabody Museum received four corn husk face masks and four false face masks through a bequest by William R. Wright. Museum accession records date the corn husk face masks to the late 20th century, and describe them as "Iroquois." Museum accession records date the false face masks to the 1970s or 1980s, and describe them as "Iroquois."

Other than the "Iroquois" attribution, more specific cultural affiliation of the masks to any one particular nation of the Haudenosaunee is not possible by the museum. The Haudenosaunee Confederacy includes the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations. According to Haudenosaunee culture and traditions, the Onondaga Nation is the keeper of the central hearth and fire where the Grand Council of the Confederacy meets. As the keeper of the central fire, the Onondaga Nation is obligated to care for, and return to the appropriate Nation, the Haudenosaunee cultural objects that are not specifically affiliated with any one Haudenosaunee Nation. Written evidence of Haudenosaunee oral tradition presented during consultation identifies the false face masks as being sacred objects needed by traditional Haudenosaunee religious leaders. False Face masks and corn husk

masks are also considered to be objects of cultural patrimony that have ongoing historical, traditional, and cultural significance to the group and could not have been alienated by a single individual. False face masks and corn husk face masks continue to play an important, ongoing role in the spiritual and religious identity of contemporary Haudenosaunee people.

These sacred objects and objects of cultural patrimony are believed to be culturally affiliated to the Onondaga Nation of New York, on behalf of the Haudenosaunee Confederacy (also known as the Iroquois Confederacy or Six Nations, including the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations, which are represented by the following Federally-recognized tribes: Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York). The specific cultural attribution of these objects in museum records indicates an affiliation to the Haudenosaunee people. New York and the Six Nations Reserve in Canada lie within the traditional territory of the Haudenosaunee people. Consultation evidence and other research supports a finding that the stylistic characteristics of the objects reported here are consistent with traditional Haudenosaunee forms. Thus, the cultural items' cultural affiliation with the Haudenosaunee Confederacy is established through anthropological, geographical, and historical information; museum records; consultation evidence; and expert opinion.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 10 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 10 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/objects of cultural patrimony and the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, before April 1, 2010. Repatriation of the sacred objects/objects of cultural patrimony to the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York, may proceed after that date if no additional claimants come forward.

The Peabody Museum is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York, that this notice has been published.

Dated: November 24, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–4213 Filed 3–1–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000 L16100000.DO0000.WBSLXSS073H0000; GP10–0139]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: Meeting will take place on March 25, 2010, from 10 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at The Potato Commission, 108 S. Interlake Rd., Moses Lake, Washington 98837–2950.

FOR FURTHER INFORMATION CONTACT: BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It will begin at 10 a.m. and end at 2 p.m. on March 25. Members of the public will have an opportunity to address the EWRAC at 10 a.m. Discussion will focus on the Spokane and San Juan Islands Resource Management Plan.

Robert B. Towne,

Spokane District Manager.

[FR Doc. 2010–4224 Filed 3–1–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of three meetings of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on May 14, 2010; June 11, 2010; and November 17–19, 2010.

The May 14 and June 11 meetings will be conducted via teleconference. They are scheduled from 1 p.m. until 5 p.m. Eastern Daylight Time, but may conclude earlier if all business is completed.

Persons not making presentations, but who wish to listen to the May 14 or June 11 teleconference, may obtain a call-in number and access code by sending an e-mail message to *nagpra@rap.midco.net.* In the subject line, write either "May 14 teleconference" or "June 11 teleconference." Send a separate e-mail message for each teleconference to

which you wish to listen. In the body of your message, include the name, affiliation (tribe, institution, agency, or other organization), mailing address, telephone number, and e-mail address for each person who will be listening on the same line. The deadlines for registering to listen to a teleconference are April 19, 2010 (for the May 14 meeting); and May 17, 2010 (for the June 11 meeting).

The agenda for the May 14 meeting will include the selection of the Chair; introduction of the subcommittee drafting the Review Committee's Report to Congress for 2009; presentation and discussion of the intended scope of the Report to Congress; presentations to the Review Committee by Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on both the positive experiences and the barriers encountered with NAGPRA compliance; other presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public; and National NAGPRA Program reports. The final agenda for this meeting will be posted on or before April 23, 2010, at *http://www.nps.gov/history/nagpra.*

The agenda for the June 11 meeting will include the presentation by the subcommittee of the draft Review Committee Report to Congress for 2009; discussion of the draft Report to Congress and approval, or conditional approval, of the draft Report; appointment of the subcommittee to draft the Review Committee's Report to Congress for 2010, and discussion of the intended scope of the Report; requests to the Review Committee for a recommendation on the disposition, per agreement, of Native American human remains determined to be culturally unidentifiable; and presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. The final agenda for this meeting will be posted on or before May 21, 2010, at *http://www.nps.gov/history/nagpra.*

The November 17–19 meeting will take place in Washington, DC, at the Yates Auditorium of the Department of the Interior, 1849 C Street, NW. Meeting sessions will begin at 8:30 a.m., and will end at 5 p.m. each day. The agenda for this meeting will include the presentation by the subcommittee of the draft Review Committee Report to Congress for 2010; discussion of the draft Report to Congress and approval, or conditional approval, of the draft Report; appointment of the subcommittee to draft the Review Committee's Report to Congress for 2011, and discussion of the intended scope of the Report; National NAGPRA reports; the selection of dates and sites for the fall 2011 and spring 2012 meetings; requests to the Review Committee for a recommendation on the disposition, per agreement, of Native American human remains determined to be culturally unidentifiable; presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public; requests to the Review Committee, pursuant to 25 U.S.C. 3006 (c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items; and the hearing of disputes among parties convened by the Review Committee, pursuant to 25 U.S.C. 3006 (c)(4). The final agenda for this meeting will be posted on or before October 22, 2010, at *http://www.nps.gov/history/nagpra.*

For the May 14 meeting, the Review Committee is soliciting presentations by Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on both the positive experiences and the barriers encountered with NAGPRA compliance. The deadline for submitting presentations on this topic is April 9, 2010. Electronic submissions are preferred, and are to be sent to: *David_Tarler@nps.gov.* Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

For the May 14, June 11, and November 17–19 meetings, the Review Committee will consider requests for other presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. Each request must include an abstract of the presentation and contact information for the presenter(s). The deadlines for presentation requests are March 19, 2010 (for the May 14 meeting); April 16, 2010 (for the June 11 meeting); and September 17, 2010 (for the November 17–19 meeting). Electronic submissions are preferred, and are to be sent to: *David_Tarler@nps.gov.* Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

For the June 11 and November 17–19 meetings, the Review Committee will consider requests for a recommendation on the disposition, per agreement, of Native American human remains determined to be culturally unidentifiable (CUI). Each request must include the completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the form, go to *http://www.nps.gov/history/nagpra,* and then click on "Request for CUI Disposition form." The deadlines for CUI disposition agreement requests are March 19, 2010 (for the June 11 meeting); and August 20, 2010 (for the November 17–19 meeting). Electronic submissions are preferred, and are to be sent to: *David_Tarler@nps.gov.* Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

For the November 17–19 meeting, the Review Committee will consider requests, pursuant to 25 U.S.C. 3006 (c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items. The Review Committee also will consider requests, pursuant to 25 U.S.C. 3006 (c)(4), to convene parties and hear disputes.

Each request pursuant to 25 U.S.C. 3006 (c)(3) must include—

a. The proposed questions for the Review Committee to consider.

b. A statement of facts relevant for answering the questions posed.

c. Copies of documents that are relevant for answering the questions posed.

d. A statement of the requesting party's position and reasoning for their position.

e. A list of all interested parties known to the requesting party.

f. A summary of the consultation record.

g. The findings of fact and recommendations sought from the Review Committee.

Each request pursuant to 25 U.S.C. 3006 (c)(4) must include items a. through g., above, and—

h. A summary of previous efforts to resolve the dispute, including, if applicable, the results of alternative dispute resolution.

i. A statement providing the requesting party's understanding of the other party's/parties' position and reasoning for their position.

The deadline for requests pursuant to 25 U.S.C. 3006 (c)(3) and (c)(4) is July 23, 2010. Electronic submissions are preferred, and are to be sent to: *David_Tarler@nps.gov.* Mailed submissions are to be sent to:

Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available on the National NAGPRA Program Web site, at *http://www.nps.gov/history/nagpra.* For the Review Committee's meeting procedures, click on "Review Committee," then click on "Procedures." Meeting minutes may be accessed by going to the Web site; then clicking on "Review Committee;" and then clicking on "Meeting Minutes." Approximately fourteen weeks after each Review Committee meeting, the meeting transcript is posted for a limited time on the National NAGPRA Program Web site.

The Review Committee was established in Section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3006. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

Dated: January 14, 2010.

David Tarler,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2010–3763 Filed 3–1–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 332–509 and Inv. No. 332–510]

Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms and Small and Medium-Sized Enterprises: Characteristics and Performance

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of Washington, DC public hearing.

SUMMARY: The Commission has rescheduled to March 18, 2010, the Washington, DC public hearing in these investigations previously scheduled for February 9–10, 2010. The February 9–10 hearing was cancelled when Federal Government activity was cancelled due to a snow storm.

Persons wishing to appear at the March 18 hearing should file requests to appear, or confirm earlier requests to appear, in accordance with the procedures below. The dates and procedures relating to hearings in these investigations in St. Louis, MO, on March 10, 2010, and Portland, OR, on March 12, 2010, remain the same as previously announced.

DATES:

March 8, 2010: Deadline for filing requests to appear at the Washington hearing.

March 10, 2010: Deadline for filing pre-hearing briefs, statements, or summaries, Washington hearing.

March 18, 2010, 9:30 am: Washington public hearing.

March 26, 2010: Deadline for filing post-hearing briefs and statements for the Washington hearing.

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.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Justino De La Cruz (202–205–3252 or *justino.delacruz@usitc.gov*) or William Deese (202–205–2626 or *william.deese@usitc.gov*) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). 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 Information: As previously announced, the hearings relate to the second and third of a series of three investigations that the Commission is conducting under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the United States Trade Representative (USTR). The Commission delivered its report to the USTR on the first investigation, No. 332–508, *Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports,* on January 12, 2010, and it is available to the public at *www.usitc.gov.* The Commission is scheduled to deliver its reports to the USTR on the second and third investigations, investigation No. 332–509, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms,* and investigation No. 332–510, *Small and Medium-Sized Enterprises: Characteristics and Performance,* by July 6, 2010, and October 6, 2010, respectively. Notices announcing institution of the three investigations were published in the **Federal Register** of October 28, 2009 (74 FR 55581); December 1, 2009 (74 FR 62812); and December 11, 2009 (74 FR 65787). A notice announcing the time and place of the hearings in St. Louis, MO and Portland, OR was published in the **Federal Register** of February 4, 2010 (75 FR 5804).

Washington Hearing: The rescheduled Washington hearing will be held in the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on Thursday, March 18, 2010. The hearing will be open to the public. Accordingly, persons testifying should not include confidential business information in their testimony. Any person desiring to submit confidential business information to the Commission in these investigations should do so in

writing in accordance with the procedures set out in the "Written Submissions" section below.

Notice of Appearance: Written requests to appear at the Washington hearing must be filed with the Secretary to the Commission in Washington, DC by 5:15 p.m. March 8, 2010. The request, which may be in the form of a letter and which should be on company or other appropriate stationery, should identify the hearing at which the person wishes to appear, the investigation to which their testimony pertains (it could be both investigations), their name, title, and company or other organizational affiliation (if any), address, telephone number, e-mail address, and industry or main line of business of the company if any they are representing. Requests to appear must be made by post mail or delivered in person (*see* **ADDRESSES**). The Commission will also accept requests to appear filed by e-mail to *SMEhearings@usitc.gov,* or through Laura Bloodgood at *laura.bloodgood@usitc.gov.* The Commission does not accept requests filed by fax. Persons who previously filed requests to appear in connection with the February 9–10 hearing dates should re-confirm their earlier requests to appear or indicate that they will be unable to appear.

Pre- and Post-Hearing Briefs and Statements, Summaries: Participants are encouraged to provide a pre-hearing brief or statement or, in lieu thereof, may provide a one-page summary of the testimony they plan to present. Such summaries will be placed in the public record and therefore should not include any confidential business information. Any confidential business information included in a pre-hearing brief or statement should be submitted in accordance with the procedures set forth below under "Written Submissions." Post-hearing briefs and statements are generally for the purpose of responding to matters raised at the hearing, including questions asked by the Commissioners or testimony presented by other interested parties.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning these investigations. All written submissions should be addressed to the Secretary to the Commission, and all such submissions (other than pre- and post-hearing statements) should be received not later than 5:15 p.m., March 26, 2010, in investigation No. 332–509 and May 28, 2010, in investigation No. 332–510 as previously announced. One signed original (or a copy so designated) and fourteen (14) copies of each document must be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see below for further information regarding confidential business information). Written submissions may be filed by post mail or delivered in person (*see* **ADDRESSES**), or filed using the Commission's electronic filing procedure described below. To use the Commission's electronic filing procedure, filers must first be registered users of the Commission's Electronic Document Information System (EDIS), accessible from the USITC Web site (*http://www.usitc.gov/secretary/edis.htm*). The Commission's rules for electronic filing are available in its *Handbook on Electronic Filing Procedures* (*http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Persons with questions regarding electronic filing and EDIS should contact the Office of the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission transmits to his office. Any confidential business information received by the Commission in these investigations and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: February 24, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–4264 Filed 3–1–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0006]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 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, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

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 John Wodatch (phone number and address listed below). If you have

additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 respondents at 6 hours per self-evaluation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 48,000 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–4199 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

OMB Number 1190–0004]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-Day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 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, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

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 John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities ("program accessibility"). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a "transition plan" setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,000 respondents at 8 hours per transition plan.

(6) An estimate of the total public burden (in hours) associated with the collection: 24,000 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–4201 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0009]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-day notice of information collection under review: Title II of the Americans With Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 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, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

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 John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–4198 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0005]

Civil Rights Division, Disability Rights Section; Agency Information Collection Activities Under Review

ACTION: 60-day notice of information collection under review: Title III of the Americans With Disabilities Act, Certification of State and Local Government Accessibility Requirements.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

We request written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 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, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

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 John Wodatch (phone number and

address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection.* Extension of Currently Approved Collection.

(2) *The title of the form/collection.* Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary: State or Local Government.* Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of "places of public accommodation" and "commercial facilities."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* 10 respondents per year at 32 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection.* 320 hours annual burden.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 24, 2010.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 2010–4200 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0046]

Agency Information Collection Activities: Existing collection, Comments Requested

ACTION: 30-day notice of information collection for renewal.

Three Fingerprint Cards: Arrest and Institution; Applicant; Personal Identification.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection renewal to the Office of Management and Budget (OMB) for review in accordance with established review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** Volume on December 15, 2009, Volume 74, Number 239, Pages 66375–66376, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 a practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the propose 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 of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing collection in use with an OMB control number of 1110–0046.

(2) *The title of the form/collection: Three Fingerprint Cards:* Arrest and Institution; Applicant; Personal Identification.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–353 (Personal Identification); CJIS Division, FBI, DOJ.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Integrated Automated Fingerprint Identification System (IAFIS) of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 88,979 agencies as respondents at 10 minutes per fingerprint card completed.

(6) An estimate of the total public burden (in hours) associated with this collection: There are approximately 110,969 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 23, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–4044 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

February 24, 2010.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by March 24, 2010. A copy of this ICR, with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King at 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov.* Comments and questions about the ICR listed below should be received 5 business days prior to the requested OMB approval date.

The OMB 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.

Agency: Employment and Training Administration.

Title of Collection: American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) Grants.

OMB Control Number: Pending.

Affected Public: Private Sector (relevant grantees) and Individuals or households (program participants)

Total Estimated Number of Respondents: 262 grantees and 33,000 program participants.

Total Estimated Annual Burden Hours: 87,048.

Total Estimated Annual Cost Burden (excluding hourly wage costs): $0.

Description: The American Recovery and Reinvestment Act of 2009 (The Recovery Act) was signed into law by President Obama on February 17, 2009. Among other funding directed to the Department of Labor, the Recovery Act provides $750 million for a program of competitive grants for worker training and placement in high growth and emerging industries, the American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) grants. It is critical to record the impact of these Recovery Act resources, current information on participants in these grants, and the services provided to them. Therefore, to obtain a more robust look at participants and services provided with Recovery Act resources, the Employment & Training Administration (ETA) proposes a new information collection set for ARRA HGEI grantees.

Why Are We Requesting Emergency Processing? This collection comprises a participant and performance reporting strategy that will provide a more robust view of the impact of the Recovery Act funds, providing greater information on levels of program participation, the characteristics of the participants served and the types of services provided through ARRA HGEI programs. The performance reporting requirements in this package align with outcome categories identified in the Solicitation for Grant Applications (SGAs) used to award these grants, SGA/DFA PY–08–17, SGA/DFA PY–08–18, SGA/DFA PY–08–19, SGA/DFA PY–08–20, SGA/DFA PY–08–21 and SGA/DFA PY–09–01. This data collection will provide ETA with more comprehensive information on the status of individual grants and individuals that receive services and find employment through these grants, and the data collection will enable ETA to provide more targeted technical assistance to support improvement of grantee outcomes. ETA will provide ARRA HGEI grantees with a data collection system that will support the collection of participant data for required reporting elements. ETA has already started awarding ARRA HGEI grants, and expects to award nearly all ARRA HGEI grants by February 2010, so the approval of this request is also necessary to allow ETA to provide an OMB approved reporting form quickly to ARRA HGEI grantees as their grant operations commence and to report performance accountability information immediately on the use of Recovery Act funds.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–4207 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,041]

Aleris Blanking and Rim Products, Inc., a Division of Aleris International, Inc., Terre Haute, IN; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 29, 2010, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on December 10, 2009 and the Notice of Determination was published in the **Federal Register** on January 25, 2010 (75 FR 3932).

The initial investigation resulted in a negative determination based on the findings that imports of aluminum blanks and hoops did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding customers of the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is

of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of February, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4247 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,221; TA–W–70,221A]

Wacker Chemical Corporation Wacker Polymers Division a Subsidiary of Wacker Chemie AG Including On-Site Leased Workers From On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc. and Yoh Managed Staffing South Brunswick, NJ; Wacker Chemical Corporation Wacker Polymers Division a Subsidiary of Wacker Chemie AG Including On-Site Leased Workers From Manpower Allentown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 2009, applicable to workers of Wacker Chemical Corporation, Wacker Polymers Division, a subsidiary of Wacker Chemie AG, including on-site leased workers from Wycoff Group, d/b/a Snelling Staffing and BSS, South Brunswick, New Jersey. The notice was published in the **Federal Register** on September 2, 2009 (74 FR 45476).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wet emulsion used in the construction industry, such as adhesives, paints, caulks, grouts and paper products.

The company reports that worker separations occurred at the Allentown, Pennsylvania location of the Wacker Polymers Division of Wacker Chemical Corporation. The Allentown, Pennsylvania location provided R&D, application support, tech service, business support functions (sales) service functions for the subject firms' production facility in South Brunswick, New Jersey.

Based on these findings, the Department is amending this certification to include workers of the Wacker Chemical Corporation, Wacker Polymer Division, Allentown, Pennsylvania.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production of wet emulsions used in the construction industry, such as adhesive, paints, caulks, grouts and paper products to Germany and China.

The amended notice applicable to TA–W–70,221 is hereby issued as follows:

All workers of Wacker Chemical Corporation, Wacker Polymer Division, a subsidiary of Wacker Chemie AG, including on-site leased workers from On-Board Services, Inc., Action Mechanical Contractors, Ambient Electrical Contracting, Inc. and Yoh Managed Staffing South Brunswick, New Jersey (TA–W–70,221) and Wacker Chemical Corporation, Wacker Polymer Division, including on-site leased workers from Manpower, Allentown, Pennsylvania (TA–W–70,221A), who became totally or partially separated from employment on or after May 18, 2008, through July 16, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through July 16, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 28th day of January 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4242 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,547]

Acxiom Corporation, Including Workers Whose Wages Are Reported Through May and Spey Information Security Team, Chicago, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 2009, applicable to workers of Acxiom Corporation, Information Security Team, Downers Grove, Illinois. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59254).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers provide security communication and training, resource coordination and security compliance services for external clients.

New information shows that the correct location of the Information Security Team was located at the Chicago Illinois client location not Downers Grove, Illinois as stated in the certification notice issued for the subject firm. Information also shows that some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account through May and Speh, a wholly owned subsidiary of Acxiom Corporation.

Accordingly, the Department is amending this certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the acquisition of security communication and training, resource coordination and security compliance services from India.

The amended notice applicable to TA–W–70,547 is hereby issued as follows:

All workers of Acxiom Corporation, including workers whose UI wages are reported through May and Speh, Information Security Team, Chicago, Illinois, who became totally or partially separated from employment on or after May 17, 2008, through September 30, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 26th day of January 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4244 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,128]

Samsung Austin Semiconductor, LLC, DRAM Fab 1, a Subsidiary of Samsung Electronics Corporation, Including On-Site Leased Workers From Manpower and Amtech Systems, Inc., Austin, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 14, 2009, applicable to workers of Samsung Austin Semiconductor, LLC, a subsidiary of Samsung Electronics Corporation, DRAM Fab 1, including on-site leased workers from Manpower, Austin, Texas. The notice will be published in the **Federal Register** soon.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of DRAM chips for use in electronics.

The company reports that on-site leased workers from Amtech Systems, Inc. were employed on-site at the Austin, Texas location of Samsung Austin Semiconductor, LLC, a subsidiary of Samsung Electronics Corporation, DRAM Fab 1. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Amtech Systems, Inc., working on-site at the Austin, Texas location of Samsung Austin Semiconductor, DRAM FAB 1.

The amended notice applicable to TA–W–72,128 is hereby issued as follows:

All workers of Samsung Austin Semiconductor, DRAM Fab 1, a subsidiary of Samsung Electronics corporation, including on-site leased workers of Manpower and Amtech Systems, Inc., Austin, Texas, who became totally or partially separated from employment on or after August 26, 2008, through January 14, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of January, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4248 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,380]

Americas Styrenics, LLC–Marietta Plant a Subsidiary of Americas Styrenics, LLLC Formerly Known as Chevron Phillips Chemical Co. LP Including On-Site Leased Workers From Pioneer Pipe Co.: Marietta, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 19, 2009, applicable to workers of Americas Styrenics LLC–Marietta plant, a subsidiary of Americas Styrenics LLC, including on-site leased workers from Pioneer Pipe Co., Marietta, Ohio. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3937).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of styrene monomer and polystyrene pellets.

Information shows that Americas Styrenics LLC–Marietta Plant was formerly known as Chevron Phillips Chemical Co. LP. Some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Chevron Phillips Chemical Co. LP.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased customer imports of styrene monomer and polystyrene pellets.

The amended notice applicable to TA–W–70,380 is hereby issued as follows:

All workers of Americas Styrenics LLC–Marietta Plant, a subsidiary of Americas Styrenics LLC, formerly known as Chevron Phillips Chemical Co LP, including on-site leased workers from Pioneer Pipe Co., Marietta, Ohio, who became totally or partially separated from employment on or after May 20, 2008 through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 27th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Divisionof Trade Adjustment Assistance.

[FR Doc. 2010–4243 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,500]

Hardinge, Inc., Including On-Site Leased Workers of Manpower and Employment Solutions, Elmira, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 5, 2009, applicable to workers of Hardinge, Inc., including on-site leased workers from Manpower, Elmira, New York. The notice will be published in the **Federal Register** soon.

At the request of the State Agency and company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production machine tools and accessory products.

The company reports that on-site leased workers from Employment Solutions were employed on-site at the Elmira, New York location of Hardinge, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Employment Solutions, working on-site at the Elmira, New York location of Hardinge, Inc.

The amended notice applicable to TA–W–72,500 is hereby issued as follows:

All workers of Hardinge, Inc., Elmira, New York including on-site leased workers from Manpower and Employment Solutions, who became totally or partially separated from

employment on or after September 29, 2008, through November 5, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 4th day of February, 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4241 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. OSHA–2007–0041]

FM Approvals: Application for Expansion of Recognition; Wyle Laboratories: Voluntary Modification of the Scope of Recognition; and Temporary Reinstatement of NFPA 72

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of FM Approvals LLC (FM) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL), and presents the Agency's preliminary finding to grant this request. This preliminary finding does not constitute an interim or temporary approval of this application. This notice also announces a voluntary modification of the NRTL scope of recognition of Wyle Laboratories, Inc., and the temporary reinstatement of NFPA 72.

DATES: For the FM application, submit information or comments, or any request for extension of the time to comment, on or before March 17, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

The modification of the NRTL scope of recognition of Wyle Laboratories will become effective on March 2, 2010. The temporary reinstatement of NFPA 72 is retroactive to September 14, 2009 and will terminate on September 14, 2011. Do not submit comments or other responses regarding this modification or reinstatement.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If submissions, including attachments, are no longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, or messenger or courier service: Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2007–0041, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (i.e., OSHA–2007–0041). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these may be made available online at *http://www.regulations.gov*.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period for the FM application on or before March 17, 2010 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110. For information about the NRTL Program, go to *http://www.osha.gov*, and select "N" in the site index.

SUPPLEMENTARY INFORMATION: Electronic copies this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other information also are available at OSHA's Web Page at *http://www.osha.gov*.

I. Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) is providing notice that FM Approvals LLC (FM) applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). FM's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*. Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that have the technical capability to perform the testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for testing and certification.

The current address of the FM facilities (sites) recognized by OSHA are: FM Approvals, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062, and FM Approvals, 743 Reynolds Road, West Gloucester, Rhode Island 02814.

General Background on the Application

FM submitted an application, dated July 18, 2007, to expand its recognition to include 31 additional test standards. The NRTL Program staff is deferring action on 20 of these standards pending resolution of technical issues. The staff determined that ten of the remaining 11 standards are "appropriate test standards" within the meaning of 29 CFR 1910.7(c). In connection with this request, NRTL Program staff did not perform an on-site review of FM's recognized sites. However, the staff analyzed other information pertinent to the request and determined that FM has the capabilities to perform the testing relating to the ten standards, which are listed below. As a result, the Agency would approve these ten test standards for the expansion.

FM seeks expansion of its recognition for testing and certification of products to the following test standards:[1]

UL 153 Portable Electric Luminaires[2]
UL 268A Smoke Detectors for Duct Application
UL 484 Room Air Conditioners
UL 521 Heat Detectors for Fire Protective Signaling Systems
UL 1480 Speakers for Fire Alarm, Emergency, and Commercial and Professional Use
UL 1638 Visual Signaling Appliances—Private Mode Emergency and General Utility Signaling
FM 3210 Heat Detectors for Automatic Fire Alarm Signaling
FM 7260 Electrostatic Finishing Equipment
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements

OSHA's recognition of FM, or any NRTL, for a test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

The test standards listed above may be approved as American National Standards by the American National Standards Institute (ANSI). However, for clarity, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI for information on whether a test standard is currently ANSI-approved.

Preliminary Finding on the Application

FM submitted an acceptable request for expansion of its recognition as an NRTL. Our review of the application file and other pertinent documents indicates that FM can meet the requirements, as prescribed by 29 CFR 1910.7, for an expansion of its recognition to include the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether FM meets the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. We may deny a request for an extension if it is not adequately justified. You may obtain or review copies of FM's request and other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. OSHA–2007–0041 contains all materials in the record concerning FM's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant FM's expansion request. The Assistant Secretary will make the final decision on granting the request, and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

II. Notice of Modification of Wyle's Recognition

Wyle Laboratories, Inc., (WL) has requested a modification to its current scope of recognition under the NRTL Program. This request, dated August 27, 2009, reduces the number of test standards in WL's current NRTL scope. Subsection II.D of Appendix A to 29 CFR 1910.7 provides that OSHA must inform the public of such a reduction in scope. Accordingly, effective today, OSHA is modifying WL's scope of recognition to eliminate the 38 test standards listed below. Wyle also requested removal of another test standard (UL 1262); however, OSHA removed it earlier from Wyle's scope of recognition.

UL 8 Foam Fire Extinguishers
UL 20 General-Use Snap Switches
UL 92 Fire Extinguisher and Booster Hose
UL 98 Enclosed and Dead-Front Switches
UL 244A Solid-State Controls for Appliances
UL 299 Dry Chemical Fire Extinguishers
UL 363 Knife Switches
UL 393 Indicating Pressure Gauges for Fire-Protection Service
UL 444 Communications Cables
UL 466 Electric Scales
UL 497A Secondary Protectors for Communication Circuits
UL 506 Specialty Transformers
UL 626 2½; Gallon Stored-Pressure Water-Type Fire Extinguishers
UL 711 Rating and Fire Testing of Fire Extinguishers
UL 796 Printed-Wiring Boards
UL 917 Clock-Operated Switches
UL 1022 Line Isolated Monitors
UL 1047 Isolated Power Systems Equipment
UL 1053 Ground-Fault Sensing and Relaying Equipment
UL 1054 Special-Use Switches
UL 1058 Halogenated Agent Extinguishing System Units
UL 1091 Butterfly Valves for Fire-Protection Service
UL 1093 Halogenated Agent Fire Extinguishers
UL 1254 Pre-Engineered Dry Chemical Extinguishing Systems Units
UL 1411 Transformers and Motor Transformer for Use in Audio-, Radio-, and Television-Type Appliances
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
UL 1416 Overcurrent and Overtemperature Protectors for Radio and Television-Type Appliances
UL 1424 Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1429 Pullout Switches

[1] The designations and titles of these test standards were current at the time of the preparation of this notice.

[2] FM requested recognition for UL 298—Portable Electric Hand Lamps, but this standard has been withdrawn and superseded by UL 153.

UL 1474 Adjustable Drop Nipples for Sprinkler Systems
UL 1481 Power Supplies for Fire-Protective Signaling Systems
UL 1486 Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1557 Electrically Isolated Semiconductor Devices
UL 1577 Optical Isolators
UL 1682 Plugs, Receptacles and Cable Connectors, of the Pin and Sleeve Type
UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 2006 Halon 1211 Recovery/Recharge Equipment
UL 2111 Overheating Protection for Motors

III. Temporary Reinstatement of NFPA 72

On September 14, 2009, OSHA published a notice (see 74 FR 47026) to modify the scopes of recognition ("scopes") of several NRTLs because standards developing organizations (SDOs) withdrew a number of test standards from their catalog of published standards. Consequently, these NRTLs could no longer use the withdrawn test standards to certify selected products requiring certification under OSHA standards. In response to the SDOs' action, OSHA's 2009 **Federal Register** notice deleted the withdrawn standards from the scope of each affected NRTL, and added to the NRTL's scopes any known replacement standard(s).

One of the withdrawn standards was ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems. The National Fire Protection Association (NFPA) withdrew this test standard several years ago after integrating it into the National Fire Alarm and Signaling Code (NFASC), also designated NFPA 72. However, OSHA's 2009 **Federal Register** notice did not list the NFASC document as a replacement for NFPA 72 because the NRTL Program requirements do not allow NRTLs to include general consensus codes or other similar standards in their scopes of recognition. Such standards do not meet the NRTL Program's requirements for an "appropriate test standard," i.e., the standards do not primarily specify testing requirements for particular types of products.

After OSHA deleted the NFPA 72 standard, several NRTLs contacted OSHA to request recognition for the NFASC. One NRTL informed OSHA that deleting the test standard so abruptly invalidated approvals for many products. The NRTLs requested a two-year transition period to identify a comparable replacement test standard to use in certifying the affected products.

When OSHA determines that a comparable replacement test standard is not available, it may delay the effective date for deleting a withdrawn test standard from NRTLs' scopes so the affected NRTLs can continue certifying products while identifying a comparable replacement standard. Accordingly, OSHA is temporarily reinstating NFPA 72 to the scopes of the affected NRTLs. The reinstatement period is retroactive to September 14, 2009, the date the standard was removed from these NRTLs' scopes, and ends September 14, 2011. By September 14, 2010, each affected NRTL wishing to continue certifying the affected products must notify OSHA of the name(s) of comparable replacement test standard(s) the NRTL will use in place of NFPA 72. If not already in the NRTL's scope, OSHA will add any such standard that is "appropriate," provided the NRTL has the capability for the testing. By September 14, 2011, OSHA will remove NFPA 72 from all NRTLs' scope, and these NRTLs must cease certifying products to NFPA 72, and certify products to the comparable replacement standard(s) in their scopes.

IV. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on February 22, 2010.

David Michaels,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2010–4197 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,388]

Lucas-Smith Automotive, Inc.: Potosi, MO; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 22, 2010, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Lucas-Smith Automotive, Inc., Potosi, Missouri (subject firm). The Notice of negative determination was signed on January 8, 2010. The Department's Notice of determination was published in the **Federal Register** on February 16, 2010 (75 FR 7039). Workers of the subject firm are engaged in employment related to the sales and service of new and used automobiles.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a denial based on the findings that imports of services like or directly competitive with the services provided by workers of the subject firm did not contribute to worker separations at the subject firm and that no shift in provision of the services to a foreign country occurred during the relevant period.

In the request for reconsideration, the petitioners alleged that the subject firm is either a supplier or downstream producer to a TAA-certified firm and a loss of business with this firm contributed importantly to worker separations at the subject firm.

For the Department to issue a secondary worker certification under Section 222(c) to workers of a downstream producer, the subject firm must perform additional, value-added production processes or services directly for a TAA-certified firm. For the Department to issue a secondary worker certification under Section 222(c) to workers of an upstream supplier, the subject firm must produce and supply directly to a TAA-certified firm component parts for articles, or services, used in the production of articles or in the supply of services, that were the basis for the customers' certification and the certified firm received certification of eligibility for TAA as a primary impacted firm.

The investigation revealed that the workers of the subject firm were engaged in sales and services of new

and used automobiles to individual owners at an automotive dealership. The workers of the subject firm did not perform additional, value-added production processes or services directly to any of the certified primary firms during the investigation period. Thus, the subject firm workers are not eligible for TAA as downstream producers under secondary impact. Further, the subject firm is not an upstream supplier because it did not provide services to a TAA-certified firm during the investigation period.

The petitioner also alleged that increased imports of foreign-produced automobiles negatively impacted business of the subject firm and, therefore, workers who perform sales and service of domestic automobiles should be eligible for TAA.

When assessing a worker group's eligibility to apply for TAA, the Department exclusively considers imports of articles like or directly competitive with those manufactured by the subject firm or services like or directly competitive with those supplied by the workers of the subject firm during the relevant period. It was revealed during the initial investigation that the subject firm neither imported services like or directly competitive with the services supplied by worker group nor shifted to or acquired from foreign country services like or directly competitive with the services supplied by worker group.

The petitioners did not supply facts not previously considered and did not provide any documentation indicating that there was either (1) a mistake in the determination of facts previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 16th day of February, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4246 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,231]

Lonza, Inc., Riverside Plant, Lonza Exclusive Synthesis Section, Custom Manufacturing Division, Including On-Site Leased Workers From Lab Support, Aerotek, Job Exchange, and Synerfac, Conshohocken, PA; Notice of Revised Determination on Reconsideration

On December 23, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice of affirmative determination was published in the **Federal Register** on January 6, 2010 (75 FR 878).

The initial investigation, initiated on September 8, 2009, resulted in a negative determination, issued on November 5, 2009, that was based on the finding that imports did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign country occurred. The notice of negative determination was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation.

During the reconsideration investigation, the Department carefully reviewed new information provided by the petitioner and contacted the company official for additional information and clarification of previously-submitted information.

The reconsideration investigation revealed that the subject firm is shifting production of articles like or directly competitive with cGMP intermediates and Active Pharmaceutical Ingredients from the subject facility to a foreign country and that this shift on production contributed importantly to worker separations during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Lonza, Inc., Riverside Plant, Lonza Exclusive Synthesis Section, Custom Manufacturing Division, including on-site leased workers of Lab Support, Aerotek, Job Exchange, and Synerfac, Conshohocken, Pennsylvania, who are engaged in employment related to the production of cGMP intermediates and Active Pharmaceutical Ingredients, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Lonza, Inc., Riverside Plant, Lonza Exclusive Synthesis Section, Custom Manufacturing Division, including on-site leased workers of Lab Support, Aerotek, Job Exchange, and Synerfac, Conshohocken, Pennsylvania, who are engaged in employment related to the production of cGMP intermediates and Active Pharmaceutical Ingredients, who became totally or partially separated from employment on or after September 2, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of February, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4249 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–71,375

AK Steel Corporation, Mansfield Works Division, Including On-Site Leased Workers From Time Customized Staffing Solutions, Mansfield, OH; Notice of Revised Determination on Reconsideration

On January 8, 2010, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice of affirmative determination was published in the **Federal Register** on February 1, 2010 (75 FR 5145).

The initial investigation, initiated on June 24, 2009, resulted in a negative determination, issued on November 2, 2009, that was based on the finding that imports did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign country occurred. The notice of negative determination was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

To support the request for reconsideration, the petitioner supplied

additional information regarding the customers of the subject firm to supplement that which was gathered during the initial investigation.

During the reconsideration investigation, the Department requested an additional list of customers from the subject firm and conducted a customer survey to determine whether imports of steel coils negatively impacted employment at AK Steel Corporation, Mansfield Works Division, Mansfield, Ohio.

The survey of the subject firm's major declining customers revealed that the customers increased their imports of steel coils while decreasing purchases from the subject firm from 2007 to 2008.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of AK Steel Corporation, Mansfield Works Division, including on-site leased workers from Time Customized Staffing Solutions, Mansfield, Ohio, who are engaged in employment related to the production of steel coils, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of AK Steel Corporation, Mansfield Works Division, including on-site leased workers from Time Customized Staffing Solutions, Mansfield, Ohio, who became totally or partially separated from employment on or after June 23, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of February, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4245 Filed 3–1–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–024)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in US Patent Application No. 10/885,537, and NASA Case No. ARC–15204–1 entitled "Rapid Polymer Sequencer" to Abraxis BioScience, LLC, having its principal place of business in 11755 Wilshire Blvd. Suite 2000, Los Angeles, CA 90025. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: February 24, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–4193 Filed 3–1–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0394]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on October 14, 2009.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* 10 CFR part 5, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance".

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* 10 CFR 5 follows provisions covered in 10 CFR 4, Section 4.331 Compliance Reviews, which indicates NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to report:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States).

7. *An estimate of the number of annual responses:* 800 (600 responses plus 200 recordkeepers).

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* The total overall estimated annual burden is 3,000 hours (Reporting burden is 3,000 hours (5 hours per respondent) and Recordkeeping burden is 600 hours (3 hours per recordkeeper)).

10. *Abstract:* The regulations under 10 CFR part 5 implements the provisions of title IX of the Education Amendments of 1972, as amended. (Except Section 904 and 906 of these amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 1, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 22nd day of February, 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–4276 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0063]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities."

2. *Current OMB approval number:* 3150–0011.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

4. *Who is required or asked to report:* Licensees and applicants for nuclear power plants and research and test facilities.

5. *The number of annual respondents:* 154.

6. *The number of hours needed annually to complete the requirement or request:* 4,354.8M; 1,727.6M hours reporting (an average of 38 hrs/response) + 2,843.5M hours recordkeeping (an average of 18.5K hrs/recordkeeper).

7. *Abstract:* 10 CFR part 50 of the NRC's regulations "Domestic Licensing of Production and Utilization Facilities," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR 50 are mandatory for the affected licensees and applicants.

Submit, by May 3, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0063. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0063. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 22nd day of February, 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–4271 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0054]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such

information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 21, 2009.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would allow the production of Cobalt-60 (Co-60) by irradiating Cobalt-59 targets located in modified fuel assemblies called Isotope Test Assemblies (ITAs). The amendment would allow the licensee to load up to 12 ITAs into the Hope Creek Generating Station (HCGS) reactor core beginning with the fall 2010 refueling outage. The modified fuel assemblies, also referred to as GE14i ITAs, are planned to be in operation as part of a joint pilot program with Global Nuclear Fuel—Americas, LLC and GE—Hitachi Nuclear Energy Americas, LLC (GEH). The purpose of the pilot program is to obtain data to verify that the modified fuel assemblies perform satisfactorily in service prior to use on a production basis. The Co-60 is ultimately intended for use in the medical industry for use in cancer treatments, and blood and instrument sterilization; in the radiography and security industries for imaging; and in the food industry for cold pasteurization and irradiation sterilization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the license conditions provide clarification and do not impact plant operation in any manner. The handling of byproduct material *(i.e.,* Co-60) will continue to be done in accordance with the requirements of 10 CFR 30 and the requirements of the HCGS Facility Operating License. The proposed change to [Technical Specification (TS)] 5.3.1 provides clarification and additional description of the proposed ITAs to be used in the HCGS core. These changes do not involve an increase in the probability or consequences of an accident previously evaluated.

The use of the GE14i ITAs, has been evaluated for impact on the previously evaluated transients and design basis accidents for HCGS. GEH Safety Analysis Report—NEDC–33529P, "Safety Analysis Report to Support Introduction of GE14i Isotope Test Assemblies (ITAs) in Hope Creek Generating Station," dated December 2009, documents the results of the analyses completed to demonstrate the impact on operation following introduction of the ITAs in the HCGS core. The use of these ITAs does not adversely affect accident initiators or precursors, design assumptions, or the manner in which the plant is operated and maintained. The Cycle 17 (i.e., the first cycle of operation with the GE14i assembly) core will be designed so that the ITAs will be placed in non-limiting locations with respect to thermal limit margins or shutdown margins. The ITAs do not adversely affect the ability of any structures, systems or components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

PSEG has also evaluated the effects of these ITAs on post-irradiation conditions. The additional heat from the Co-60 decay is insignificant when compared to the total heat from a normal refueling discharge. The small amount of extra heat added by the cobalt isotope rods poses no additional risk of spent fuel pool (SFP) local boiling over that previously analyzed. The maximum incident radiation due to an irradiated GE14i bundle placed one foot from the spent fuel pool walls is in excess of the radiation that would result in significant gamma heating of the concrete. However, analysis has demonstrated that at four feet, the energy deposition rate is well below that required to cause significant concrete heating. HCGS procedures exist to guide placement of irradiated fuel bundles in the SFP to avoid gamma heating of the wall concrete. These procedures will be modified to specify that irradiated GE14i bundles must be stored at least four feet from the SFP walls. With the four foot distance requirement in effect, there is no limitation on the amount of time an irradiated GE14i bundle can be stored in the SFP.

Handling of the licensed transfer casks will be in accordance with the guidance in NUREG 0612, "Control of Heavy Loads at Nuclear Power Plants," using the Reactor Building crane. These precautions will support safe movement of the casks within the Reactor Building.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The consequences of a previously evaluated accident are not significantly increased by the proposed change. As documented in NEDC–33529P, the proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of operation with the GE14i assemblies in the HCGS core demonstrated that the licensing basis radiological analyses are not adversely impacted by the introduction of twelve GE14i assemblies at HCGS. This includes the analyses done for the transients and design basis accident events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to the HCGS license conditions and TS 5.3.1 will not introduce any new or modified equipment since these changes are intended to provide clarification only. These clarifications will not result in operation of the facility in a different way than currently operated.

While the proposed ITA pilot program does result in the introduction of several modified fuel bundles (the GE14i assemblies) these assemblies are essentially the same as the GE14 assemblies currently in use in the HCGS core. The only difference is the use of a number of cobalt isotope rods in place of fuel rods. The GE14i assembly was designed for mechanical, nuclear, and thermal-hydraulic compatibility with the GE14 fuel design. The details of the design differences between GE14 and GE14i are documented in NEDC–33529P. Use of the proposed ITAs does not involve the addition or modification of any plant equipment other than the bundles modified to include the cobalt isotope rods. Also, use of the proposed ITAs will not alter the design configuration or method of operation of plant equipment beyond its normal functional capabilities. The ITA pilot program does not create any new credible failure mechanisms, malfunctions or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the HCGS operating license conditions are intended to provide clarification as to how the generation of byproduct material in the HCGS reactor core meets the requirements of 10 CFR Part 30. The proposed change to TS 5.3.1 also provides clarification and additional description of the proposed ITAs to be used in the HCGS core. These proposed changes will not affect the design or operation of any equipment important to safety. In addition, the proposed changes to the license conditions and TS do not affect the results of any safety calculations.

Cycle independent analyses documented in NEDC–33529P show that the acceptance criteria for the safety analyses are not affected and are met. Cycle specific analyses for the ITAs will be performed as described in NEDC–33529P to establish fuel operating requirements that assure compliance with regulatory limits.

The proposed ITA pilot program has no impact on equipment design or fundamental operation, other than the modifications made to the fuel assembly as part of the program. The GE14i ITAs meet the same fuel design and licensing criteria as GE14 bundles. There are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed ITAs. The performance of the systems important to safety is not affected by the use of the proposed ITAs. The proposed change does not adversely affect safety analysis assumptions, initial conditions, or acceptance criteria and therefore, the margin of safety in the original safety analyses is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 22nd day of February 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–3988 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339; NRC–2010–0026

Virginia Electric and Power Company; North Anna Power Station, Unit Nos. 1 and 2

1.0 Background

The Virginia Electric and Power Company, (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Louisa County, Virginia.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical

[3] Requestors should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from a certain requirement of these new requirements that NAPS now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Certain portions of the licensee's November 23, 2009, letter contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must perform the required upgrades to the NAPS security system before all of the Section 73.55 requirements can be met. Specifically, the request is to extend the compliance date for a certain requirement from the current March 31, 2010, deadline to August 31, 2010. Being granted this exemption for this item would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirement.

3.0 Discussion of Part 73 Schedule Exemptions from the

March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, NRC approval of the licensee's exemption request is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. Based on the above, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected generic industry requests to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

NAPS Schedule Exemption Request

The licensee provided adequate information in its November 23, 2009, letter requesting an exemption. It describes a comprehensive plan for implementing security system upgrades and provides a timeline for achieving full compliance with the new regulation. The site-specific information provided within the exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the requirement.

Notwithstanding the schedular exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By August 31, 2010, NAPS will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to August 31, 2010, with regard to a specific requirement of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the NAPS security system upgrades are complete justifies exceeding the March 31, 2010, full compliance date and is consistent with the scope of the modifications in the case of this particular licensee. The security measures NAPS needs additional time to implement are new requirements imposed by March 27, 2009 amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the item specified in the licensee's November 23, 2009, letter, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for

incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 4591, published January 28, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of February 2010.

For The Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–4269 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 1, 8, 15, 22, 29, April 5, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 1, 2010

Tuesday, March 2, 2010

9:30 a.m. Briefing on Uranium Recovery (Public Meeting). (Contact: Dominick Orlando, 301–415–6749.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*,

Week of March 8, 2010—Tentative

There are no meetings scheduled for the week of March 8, 2010.

Week of March 15, 2010—Tentative

Tuesday, March 16, 2010

1:30 p.m. Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission on Grid Reliability (Public Meeting). (Contact: Kenn Miller, 301–415–3152.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of March 22, 2010—Tentative

There are no meetings scheduled for the week of March 22, 2010.

Week of March 29, 2010—Tentative

There are no meetings scheduled for the week of March 29, 2010.

Week of April 5, 2010—Tentative

Tuesday, April 6, 2010

9 a.m. Periodic Briefing on New Reactor Issues—Design Certifications (Public Meeting). (Contact: Amy Snyder, 301–415–6822.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: February 25, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–4384 Filed 2–26–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–7016; NRC–2009–0157]

Notice of Receipt and Availability of Environmental Report Supplement 2 for the Proposed GE-Hitachi Global Laser Enrichment Laser-Based Uranium Enrichment Facility

On January 13, 2009, GE–Hitachi Global Laser Enrichment, LLC (GLE) was granted an exemption to file its environmental report in advance of its license application. GLE submitted its Environmental Report (ER) on January 30, 2009 (ML090910573), that proposes the construction, operation, and decommissioning of a laser-based uranium enrichment facility. The proposed facility would be located approximately six miles north of the City of Wilmington in New Hanover County, North Carolina.

The U.S. Nuclear Regulatory Commission (NRC or the Commission) published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) on the proposed action and the opportunity for public comment on the scope of issues to be considered in the EIS (74 FR 16237) (April 9, 2009). The comment period was extended to allow members of the public to review the publicly available portions of the license application (July 24, 2009), (74 FR 36781). The license application was submitted on June 26, 2009, (ML091871003).

On May 8, 2009, the NRC granted an exemption to authorize GLE to conduct site preparation and pre-construction activities on the Wilmington site. GLE submitted Supplement 1 to its ER on July 13, 2009, *GLE Environmental Report Supplement 1—Early Construction* (ML092100577). Supplement 1 distinguishes between the environmental impacts of pre-construction activities covered by the exemption and NRC authorized construction activities which will not be undertaken unless a license is granted. On November 13, 2009, GLE submitted Supplement 2 to its ER, *GLE Environmental Report Supplement 2—Revised Roadway and Entrance* (ML093240135). Supplement 2 provides information describing the environmental impacts associated with revising the location of the entrance and roadway into the Wilmington site.

On January 13, 2010, the NRC issued an order that announced the receipt of an application from GLE for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 8 percent U–235 by a laser-based enrichment process. This order also included the Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 1819) (January 13, 2010).

FOR FURTHER INFORMATION CONTACT: For general or technical information

associated with the licensing review of the GLE application, please contact Mr. Timothy Johnson at (301) 492–3121 or *Timothy.Johnson@nrc.gov.* For general information about the environmental review process, please contact Ms. Jennifer A. Davis at (301) 415–3835 or *Jennifer.Davis@nrc.gov.*

Copies of GLE's application, safety analysis report, ER, and supplements to its ER (except for portions subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852. These documents are also available for review and copying using any of the following methods: (1) Enter the NRC's GE Laser Enrichment Facility Licensing Web site at *http://www.nrc.gov/materials/fuel-cycle-fac/laser.html#2a;* (2) enter the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* where the accession numbers for GLE's license application (ML091871003), ER (ML090910573), Supplement 1 to the ER (ML092100577), and Supplement 2 to the ER (ML093240135); (3) contact the NRC's PDR reference staff at 1–800–397–4209, faxing a request to 301–415–3548, or by e-mail to *pdr@nrc.gov.* Hard copies of the documents are available from the PDR for a fee.

Dated at Rockville, Maryland, this 22nd day of February 2010.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. 2010–4277 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0076]

Solicitation of Topics for Discussion at a Spent Fuel Storage and Transportation Licensing Conference

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Solicitation of Topics for Discussion at a Spent Fuel Storage and Transportation Licensing Conference.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting input on topics for discussion at a proposed June 23–24, 2010, public meeting entitled, "Spent Fuel Storage and Transportation Licensing Conference." The purpose of the proposed Conference is to discuss areas of improvement for spent fuel storage and transportation licensing activities conducted under 10 CFR part 71 and 10 CFR part 72. This solicitation will provide potential discussion topics on opportunities to improve interactions between staff and industry that could be more effective and efficient. Conference participants will be encouraged to interact with the NRC staff and with colleagues to discuss insights on the potential topics for discussion.

DATES: The solicitation period expires on May 14, 2010. The NRC will consider topics for discussion received after this date if it is practical to do so, but is able to ensure consideration of only those topics received on or before this date.

ADDRESSES: You may submit proposed topics for discussion by mail or fax. Topics for discussion submitted in writing will be posted on the NRC Web site. Because the topics for discussion will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating topics for discussion received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Mail topics for discussion to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Kevin M. Witt, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3323; fax number: (301) 492 3348; e-mail: *Kevin.Witt@nrc.gov.*

This order.

Dated at Rockville, Maryland, this 18th day of February, 2010. For the Nuclear Regulatory Commission.

Eric Benner,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–4279 Filed 3–1–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

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") has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for Regulation R, Rule 701 (17 CFR 247.701) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

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 broker 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.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 19, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4239 Filed 3–1–10; 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:

Form N–Q; SEC File No. 270–519; OMB Control No. 3235–0578.

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–Q (17 CFR 249.332 and 274.130) is a combined reporting form that is used for reports of registered management investment companies ("funds"), other than small business investment companies registered on Form N–5, under Section 30(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") and Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Pursuant to Rule 30b1–5 under the Investment Company Act, funds are required to file with the Commission quarterly reports on Form N–Q not more than 60 days after the close of the first and third quarters of each fiscal year containing their complete portfolio holdings.

Form N–Q contains collection of information requirements. The respondents to this information collection are management investment companies subject to Rule 30b1–5 under the Investment Company Act. Approximately 8,000 portfolios are required to file reports on Form N–Q, which is estimated to require an average of 21 hours per portfolio per year to complete. The estimated annual burden of complying with the filing requirement is approximately 168,000 hours. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The collection of information under Form N–Q is mandatory. The information provided by the form is not kept confidential. 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.

Dated: February 19, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4238 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 3a–4; SEC File No. 270–401; OMB Control No. 3235–0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), 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.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a–4 are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a–4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) (62 FR 15098 (Mar. 31,1997)) ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. *See* 17 CFR 270.3a–4, introductory note.

with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.[4]

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The requirement that the sponsor (or its designee) obtain information about each new client's financial situation and investment objectives when their account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate each client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure each client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that 3,109,671 clients participate each year in investment advisory programs relying on rule 3a–4. Of that number, the staff estimates that 220,805 are new clients and 2,888,866 are continuing clients. The staff estimates that each year investment advisory program sponsors staff engage in 1.5 hours per new client and 0.75 hours per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule. Furthermore, the staff estimates that each year investment advisory program staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information. Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 5,607,528 hours.

The total annual hour burden of 5,607,528 hours represents an increase of 1,158,112.5 hours from the prior estimate of 4,449,415.5 hours. This increase principally results from an increase in the number of continuing clients, but also reflects an increase in the estimated burden hours associated with several of the collections of information required under the rule. The increase in estimated burden hours per collection of information results from an increase in burden hours reported by representatives of investment advisers that rely on rule 3a–4 that Commission staff surveyed.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's safe harbor. Nevertheless, rule 3a–4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. 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: February 19, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4237 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[2] For purposes of rule 3a–4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 4, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 4, 2010 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 25, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–4333 Filed 2–26–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

U.S. Biomedical Corp., (f/k/a United Textiles & Toys, Inc.), U.S. Environmental Solutions, Inc. (n/k/a EnviroResolutions, Inc.), USA Bridge Construction of N.Y., Inc., USA Broadband, Inc., USA Uranium Corp., and Utopia Marketing, Inc. (n/k/a Daytonabrands, Inc.); Order of Suspension of Trading

February 26, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Biomedical Corp. (f/k/a United Textiles & Toys, Inc.) because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Environmental Solutions, Inc. (n/k/a EnviroResolutions, Inc.) because it has not filed any periodic reports since the period ended March 31, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Bridge Construction of N.Y., Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Broadband, Inc. because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Uranium Corp. because it has not filed any periodic reports since the period ended February 29, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Utopia Marketing, Inc. (n/k/a Daytonabrands, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 26, 2010, through 11:59 p.m. EST on March 11, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–4375 Filed 2–26–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61574; File No. SR–BATS–2010–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend BATS Rule 5.5, Entitled "Information Barrier Procedures," and To Add New BATS Rule 12.13, Entitled "Trading Ahead of Research Reports"

February 23, 2010.

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 February 11, 2010, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by BATS. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 5.5, entitled "Information Barrier Procedures," to modify the Exchange's rule regarding information barrier procedures required of certain Exchange Members. The Exchange is also proposing to add new Exchange Rule 12.13, entitled "Trading Ahead of Research Reports."

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the requirements of BATS Rule 5.5 that require a Member [3] that trades for its own account or that has a specialist or market maker operation on another market (defined in BATS Rule 5.5(a) as a "specialist") to establish and maintain certain specifically prescribed information barrier procedures and to file such procedures with the Exchange. At the same time, the Exchange proposes to amend BATS Rule 5.5 to more closely mirror the rules of other self-regulatory organizations that create certain obligations for all Member firms related to the prevention of the misuse of material, non-public information. Finally, the Exchange proposes to add new BATS Rule 12.13, which: (i) Prohibits Members from trading ahead of research reports, and (ii) requires each Member to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel.

(i) All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

Presently, the Exchange requires that each Member establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of

[3] *See* BATS Rule 1.5(n).

procedures, substantive supervision of interdepartmental communications by the Member's compliance department and procedures concerning proprietary trading when the firm is in possession of material, non-public information.[4] The Exchange also has specific rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, the Exchange prohibits a Member from trading ahead of its customer's limit orders.[5]

(ii) Proposed Amendments to General Standards and Deletion of Specific Information Barrier Procedures

As noted above, the Exchange currently maintains a general standard for all Members to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, including certain specific procedures. The Exchange also currently requires specific information barrier procedures for Members that meet the definition in BATS Rule 5.5(a) of a "specialist" and requires such firms to file their information barrier procedures with the Exchange. The Exchange proposes amending the language that imposes the general standard of preventing the misuse of material, non-public information and adding additional language to provide clarity regarding the minimum policies and procedures a Member must implement to comply with such general standards. As described in further detail below, the Exchange also proposes deleting the specific information barrier procedures required to be maintained by Exchange Members that meet the definition of "specialist."

Under the proposal, amended BATS Rule 5.5 would provide flexibility to a BATS Member to develop and maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate to that Member. The Exchange proposes adding Interpretation and Policy .01 to BATS Rule 5.5 that would provide examples of conduct that would constitute the misuse of material, non-public information.[6] Proposed Interpretation and Policy .02 to BATS Rule 5.5 would set forth specific policies and procedures that would be required of Members.[7] However, as made clear by the proposed Interpretation and Policy, such policies and procedures would not in all cases, satisfy the requirements and intent of amended BATS Rule 5.5; the adequacy of each Member's policies and procedures would depend upon the nature of such Member's business.

The Exchange proposes to eliminate, in their entirety, the requirements set forth in BATS Rule 5.5 that require certain members to maintain and file with the Exchange specifically prescribed information barrier procedures. This proposal is consistent with the change recently approved by the Commission for NYSE Arca Equities, Inc. ("NYSE Arca"), which allowed the elimination of a specific information barrier requirement previously contained in NYSE Arca rules.[8] This proposal is also consistent with the approach currently employed by the Nasdaq Stock Market, L.L.C. ("Nasdaq"), which does not generally require its members to establish or maintain information barriers.

If the deletion of the requirement to maintain and file with the Exchange certain prescribed information barrier procedures is approved, the only specific information barrier requirement of the Exchange will be the requirement described below, under proposed Rule 12.13, to maintain policies and procedures reasonably designed to restrict or limit the information flow between those with knowledge of the content or timing of a research report and trading department personnel. However, the Exchange does not intend to indicate that information barriers may not be necessary for Members in other contexts. To the contrary, information barrier procedures may be a necessary or effective means to manage conflicts of interest or to prevent communications of material non-public information between certain individuals or groups.[9] Further, as described above, under proposed Interpretation and Policy .02, the adequacy of each Member's policies and procedures will depend upon the nature of each Member's business.

(iii) Proposed Addition of BATS Rule 12.13

In an attempt to achieve additional consistency with certain other market centers, the Exchange further proposes to add new BATS Rule 12.13, prohibiting Members from establishing, increasing, decreasing or liquidating an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Similar to FINRA Rule 5280 and NYSE Arca Rule 6.7, the Exchange also proposes to require Members to establish, maintain and enforce procedures reasonably designed to restrict or limit the information flow

[4] *See* BATS Rule 5.5(a).

[5] *See* BATS Rule 12.6.

[6] Such examples include: (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or (b) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or (c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

[7] The specific policies and procedures required, at a minimum, would include: (a) All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and (b) All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and (c) Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: Has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and (d) All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

[8] Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR–NYSEArca–2009–78).

[9] The Exchange represents that it will issue a Regulatory Circular to its Members notifying such Members of this proposal and addressing related regulatory topics. For instance, the Regulatory Circular will reinforce the requirement that Members of the Exchange maintain policies and procedures that are reasonably designed to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder and the Exchange's rules, including those relating to the misuse of material non-public information. In addition, the Exchange represents that the Regulatory Circular will include the following guidance: "Pursuant to the proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. While information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules."

between research department personnel and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.

(iv) Members Retain Responsibility for Compliance

By prohibiting the misuse of material, non-public information, the Exchange believes it has appropriately defined the behavior that its participants must avoid. However, the Exchange also believes that prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (*e.g.,* BATS Rule 12.6) the Exchange has placed its participants on notice as to their specific compliance burdens with respect to preventing the misuse of material, non-public information. Further, BATS Rule 5.1 requires each Member to establish, maintain and enforce written procedures that enable such Member to supervise the activities of associated persons of the Member and to assure their compliance with applicable securities laws and regulations, and with BATS Rules. Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving a similar proposal by NYSE Arca, the Commission stated that, "while information barriers are not specifically required under the proposal, a [firm's] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules." [10]

(v) Comparison to Framework Employed by Nasdaq and NYSE Arca

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly identifies prohibited conduct (*e.g.,* misuse of material, non-public information) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.,* information barriers). For example, Nasdaq prohibits the misuse of material, non-public information but does not generally require that its members establish and maintain information barriers,[11] and NYSE Arca recently eliminated a requirement applicable to NYSE Arca market makers specifically requiring information barriers. In conjunction with such amendment, NYSE Arca adopted NYSE Arca Rule 6.7, a rule that the Exchange has mirrored with its proposal of BATS Rule 12.13. Finally, similar to BATS Rule 5.1, Nasdaq Rule 3010 and NYSE Arca Rule 6.18 require the members of Nasdaq and NYSE Arca, respectively, to establish and maintain systems to supervise the activities of associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and the applicable rules of the exchange.

The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca's respective structures. First, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Second, BATS has similar requirements to Nasdaq and NYSE Arca concerning the maintenance of a supervisory system and written supervisory procedures. The Exchange notes that FINRA and BATS have previously acknowledged, pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 ("17d–2 Agreement"), that, collectively, BATS Rules 5.1, 5.2, 5.3 and 5.4 are substantially similar to FINRA's NASD Rule 3010, which Nasdaq and NYSE Arca rules incorporate by reference. For instance, BATS Rule 5.4 is similar to Rule 3010(c), which requires each FINRA member to conduct an annual review of the businesses in which it engages and to conduct annual office inspections including the "periodic examination of customer accounts to detect and prevent irregularities or abuses." Although the Exchange has not incorporated Rule 3010(c) into its Rules by reference, Rule 3010(c) would apply to all broker-dealers that engage in a customer business, because such firms are required to be members of FINRA.[12] Also, although not as detailed as Rule 3010(c) with respect to the requirements of the inspection, BATS Rule 5.4 is nearly identical in that it requires BATS Members to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses."

Based on the foregoing, it is appropriate for the Exchange to establish a similar approach with respect to information barriers employed by Nasdaq and NYSE Arca.[13]

(vi) Conclusion: Flexibility and Accountability

Eliminating substantial portions of BATS Rule 5.5, and adding to the general standards set forth therein to prohibit the misuse of material, non-public information, as proposed by this filing, offers Exchange participants both certainty and flexibility. BATS Members are on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Like Nasdaq and NYSE Arca participants, BATS Members will now be afforded the same flexibility to maintain compliance mechanisms of their own design. The Exchange believes that this approach fosters a fair and orderly marketplace without being overly burdensome upon its Members.

2. *Statutory Basis*

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[15] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Eliminating portions of BATS Rule 5.5 that prescribe specific procedures and information barriers that must be maintained by certain Member firms,

[10] *See* Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275 (September 8, 2009) (SR–NYSEArca–2009–78).

[11] *See* Nasdaq Rules 2110–2, 2110–3, and 2110–4.

[12] *See* 15 U.S.C. 78o(b)(8); *see also* 17 CFR 240.15b9–1(a).

[13] BATS notes that its current examination procedure regarding its review for appropriate supervisory systems and procedures will remain in place.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

while establishing more clarity regarding the minimum procedures that must be maintained by any Member, consistent with other self-regulatory organizations, should eliminate unnecessary regulatory burdens while at the same time retaining an appropriate mechanism designed to ensure that material, non-public information continues to be protected. In particular, the proposed rule change will reduce the burdens on certain Members that are currently required to maintain, and file with the Exchange, specified information barriers. The Exchange believes that the proposed changes will make compliance obligations with respect to prevention of the misuse of material, non-public information more clear to Exchange Members. The amended rule structure will be more consistent with that of other exchanges and will nonetheless continue to ensure protection of investors through existing regulations relevant to misuse of material, non-public information that apply to Exchange Members through the applicability and enforcement of relevant provisions of the Act, including Section 15(f);[16] rules imposed by other self-regulatory organizations; a joint industry effort to surveil for potential insider trading violations through a Rule 17d–2 Agreement[17] and Regulatory Services Agreements between all self-regulatory organizations that trade equity securities; and through the Exchange's examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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–BATS–2010–003 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BATS–2010–003. 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 Web site viewing and printing 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 BATS. 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–BATS–2010–003 and should be submitted on or before March 23, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] The Commission believes that the proposal is consistent with Section 6(b)(5)[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is proposing to amend BATS Rule 5.5 to replace the specifically prescribed information barrier requirement with a more principles-based approach that would permit a Member to develop and apply its own policies and procedures to, among other things, prohibit the misuse of material nonpublic information. BATS Rule 5.5 addresses concerns arising from the potential for the sharing of material non-public information between a Member's market making activities and other business activities of the Member or its affiliates. For instance, one such concern is that the Member or affiliate engaging in other business activities might use non-public information that was acquired by the Member through its role as a market maker. Another concern is that the Member might use material non-public information received from the entity engaging in other business activities, such as trading based on a change in the firm's buy or sell recommendation.[20]

While amended BATS Rule 5.5 will no longer specify policies and procedures a Member must establish, the proposal will require that the policies and procedures be reasonably designed to ensure compliance with applicable Federal securities law and regulations, and with Exchange rules. The Commission believes that, with adequate oversight by the Exchange of its members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of BATS rules requiring Members to establish and maintain systems to supervise the activities of Members, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information.

Specifically, amended BATS Rule 5.5 will require Members to establish,

[16] 15 U.S.C. 78o(f).

[17] *See* Securities Exchange Act Release 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008).

[18] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR–NYSE–2008–45) (articulating concerns in the context of approving changes to NYSE Rule 98).

maintain and enforce written procedures reasonably designed to prevent the misuse of material non-public information by the Member or persons associated with the Member. The misuse of material non-public information includes trading in a security or related securities or options or other derivative securities, while in possession of material non-public information concerning the issuer, or while in possession of material non-public information concerning imminent transactions in the security or related securities.[21] The Exchange also proposes to add BATS Rule 12.13, which will prohibit a Member from establishing, increasing, decreasing or liquidating an inventory position in a security or derivative of that security based on advance non-public knowledge of the content or timing of a research report concerning that security.

Further, BATS Rules 5.1, 5.2, 5.3 and 5.4, which relate to a Member's responsibilities or obligations related to conduct or supervision, will continue to apply. For example, BATS Rule 5.1 requires BATS Members to "establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules." In addition, BATS Rule 5.4 requires BATS Members to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses." These rules thus provide additional clarification that the supervisory systems and internal inspections of Members must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable BATS rules, including those relating to the misuse of material non-public information.

Pursuant to this proposal rule change, Members may utilize the flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, the Commission notes that, while information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. In this regard, the Exchange included in Interpretation and Policy .02 to amended BATS Rule 5.5 a statement that the adequacy of each Member's policies and procedures relating to the misuse of material non-public information will depend upon the nature of such Member's business.

The Commission believes that the regulatory approach in this proposed rule change is substantially similar to the regulatory approach of Nasdaq and NYSE Arca. In particular, the BATS approach, like the Nasdaq and NYSE Arca approach, (i) enumerates the conduct that is prohibited by its members, including the potential misuse of material non-public information and (ii) provides for the policies and procedures that must be reasonably designed to ensure compliance with the same. In addition, the Commission notes that the Exchange has represented that its current examination procedure for the review of appropriate supervisory systems and procedures will remain in place.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Although this proposed rule change does not require that Members maintain specifically-prescribed information barriers, it will continue to mandate that Members establish and maintain a set of policies and procedures reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. As such, the Exchange is adopting an approach that is substantially similar to the approach currently employed by Nasdaq and NYSE Arca.[23]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–BATS–2010–003) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4230 Filed 3–1–10; 8:45 am]

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[21] *See* BATS Rule 5.5, Commentary .01.

[22] 15 U.S.C. 78s(b)(2).

[23] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM–2110–2; IM–2110–3; IM–2110–4, and Rule 3010); 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR–NYSEArca–2009–78).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61575; File No. SR–FINRA–2010–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the By-Laws of NASD Dispute Resolution

February 23, 2010.

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 Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on January 22, 2010, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the By-Laws of NASD Dispute Resolution.[3]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] If this proposed rule change is approved by the Commission, the By-Laws of NASD Dispute Resolution will be redesignated as the "By-Laws of FINRA Dispute Resolution."

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background on FINRA and Its Subsidiaries

On July 30, 2007, NASD and the New York Stock Exchange ("NYSE") consolidated their member firm regulation and dispute resolution operations into a combined organization, FINRA.[4] As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes. The resulting FINRA By-Laws included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.

On September 8, 2008, FINRA filed a proposal with the SEC to amend the By-Laws of FINRA's regulatory subsidiary ("FINRA Regulation") to realign the representation of industry members on the National Adjudicatory Council ("NAC") to follow more closely the industry representation on the FINRA Board of Governors ("FINRA Board"), to eliminate the Regional Nominating Committees, to transfer such committees' responsibilities for NAC industry appointments to the FINRA Nominating Committee ("Nominating Committee"), and to change the name of "NASD Regulation" and "NASD" to "FINRA Regulation " and "FINRA" respectively.[5] The SEC approved the amendments to FINRA Regulation's By-Laws on November 6, 2008.[6]

On March 27, 2009, FINRA filed a proposal with the SEC to amend further the By-Laws of FINRA Regulation to modify the FINRA Regulation Board ("FINRA Regulation Board") composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.[7] The SEC approved the amendments to FINRA Regulation's By-Laws on May 21, 2009.[8]

FINRA Dispute Resolution (formerly known as NASD Dispute Resolution) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), as amended,[9] which NASD adopted first in 1996. Pursuant to the Delegation Plan, FINRA's dispute resolution subsidiary conducts arbitration, mediation and other dispute resolution programs and interprets rules and regulations pertaining to its dispute resolution programs.[10] NASD Dispute Resolution's By-Laws were not amended at the time of the consolidation. Now that the consolidation has been completed and amendments to FINRA Regulation's By-Laws have been approved, FINRA believes NASD Dispute Resolution's By-Laws should be updated.

In July 2007, when NASD and the NYSE consolidated their member firm regulation and dispute resolution operations, FINRA created a Regulation Policy Committee of the Board of Governors, the members of which are 14 Governors from FINRA's Board of Governors.[11] The members of the Regulation Policy Committee also serve as the Directors of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.[12] The Commission approved the composition of FINRA's committees when it approved amendments to FINRA's By-Laws on July 26, 2007.[13] The Commission also approved the composition of FINRA Regulation's Board of Directors when it approved amendments to FINRA's By-Laws on May 21, 2009.[14] When the FINRA Regulation and FINRA Dispute Resolution Boards of Directors meet, they act in their respective capacities as directors of those subsidiaries. The FINRA Dispute Resolution Board of Directors continues to oversee the management of FINRA Dispute Resolution, establish policies and procedures, and monitor the use of financial resources, among other things.

Proposal To Amend NASD Dispute Resolution's By-Laws

FINRA is proposing to amend the NASD Dispute Resolution By-Laws to: (1) Modify the composition of the FINRA Dispute Resolution Board; (2) adopt changes to conform the NASD Dispute Resolution By-Laws to the FINRA By-Laws; and (3) implement other conforming changes to reflect the corporate name change and other similar matters. The proposed amendments to NASD Dispute Resolution By-Laws are modeled on those of the FINRA and FINRA Regulation By-Laws (which, as discussed above, were both previously approved by the Commission), with modifications, described below, as appropriate to the particular functions of FINRA Dispute Resolution.

The following discussion addresses the proposed amendments to NASD Dispute Resolution's By-Laws under the article of the By-Laws of NASD Dispute Resolution in which the amendments would first appear.

Amendments to Article I—Definitions

Article I of the NASD Dispute Resolution By-Laws contains definitions of terms used in the By-Laws. FINRA is proposing to add to or amend some of these definitions.

Broker and Dealer

FINRA is proposing to amend the definitions of "broker" and "dealer" in Article I of the By-Laws of NASD Dispute Resolution to conform them to the definitions of "broker" and "dealer" in the Act, as amended by the Gramm-Leach-Bliley Act of 1999.[15] As proposed, FINRA would incorporate by reference the definitions of the terms "broker" and "dealer" as set forth in Sections 3(a)(4) and 3(a)(5),

[4] *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR–NASD–2007–023).

[5] *See* Securities Exchange Act Rel. No. 58626 (Sept. 23, 2008), 73 FR 56872 (Sept. 30, 2008) (File No. SR–FINRA–2008–046, Notice of Filing and Amendment No. 1).

[6] *See* Securities Exchange Act Rel. No. 58909 (Nov. 6, 2008), 73 FR 68467 (Nov. 18, 2008).

[7] *See* Securities Exchange Act Rel. No. 59696 (Apr. 2, 2009), 74 FR 16020 (Apr. 8, 2009) (File No. SR–FINRA–2009–020).

[8] *See* Securities Exchange Act Rel. No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (Order Approving SR–FINRA–2009–020).

[9] *See* Securities Exchange Act Rel. No. 41971 (Sept. 30, 1999), 64 FR 55793 (Oct. 14, 1999) (Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Create a Dispute Resolution Subsidiary).

[10] *See* FINRA Manual, Corporate Organization, Plan of Allocation & Delegation of Functions by NASD to Subsidiaries, NASD Dispute Resolution, Section III (A)(1)(a) and (c).

[11] FINRA's Board of Governors consists of 21 members, 11 of whom are public members. *See* FINRA By-Laws, Article I(ss) and I(tt), definitions of Public Director and Public Governor, respectively. The Regulation Policy Committee is comprised of seven public, five industry, and two neutral members of FINRA's Board of Governors. The two neutral members are the Chief Executive Officers of FINRA and NYSE Regulation, Inc. FINRA's By-Laws require that FINRA's committees consist of a majority public members. *See* FINRA By-Laws, Article IX (Committees—Appointment), section 1(b).

[12] FINRA's Chair and Chief Executive Officer is an ex-officio, non-voting member of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.

[13] *Supra* note 3.

[14] *Supra* note 7.

[15] Public Law 106–102, 113 Stat. 1338 (1999).

respectively, of the Act.[16] The SEC approved the same change to definitions of the terms "broker" and "dealer" in the then-NASD Regulation's By-Laws in March 2001.[17] FINRA believes that the proposed changes to the terms "broker" and "dealer" are necessary to ensure that the definitions in the NASD Dispute Resolution By-Laws remain consistent with the definitions of the Act.

Corporation

FINRA is proposing to add the term "Corporation" to Article I of the By-Laws of NASD Dispute Resolution to reflect the change of the Corporation's name from "NASD" to "FINRA."[18] Proposed Article I(e) would define Corporation to mean the National Association of Securities Dealers, Inc., the Financial Industry Regulatory Authority, Inc., or any future name of the entity.

Electronic Transmission

FINRA is proposing to add the term "electronic transmission" to Article I of the By-Laws of NASD Dispute Resolution to reflect the common usage of electronic transmission as a means of communication.[19] The term "electronic transmission" would be defined to mean communicating or disseminating information or documents to individuals or entities by telegraph, telefax, cable, radio, wireless or other device or method. FINRA intends "other device or method" to include e-mail, text messages, and related technologies, for example. FINRA believes that the new definition clarifies the current methods FINRA uses to communicate with and disseminate information to individuals and entities, and gives FINRA flexibility to use other devices or methods as advances in technology are made.

FINRA Member

FINRA is proposing to add the term "FINRA member" to Article I of the By-Laws of NASD Dispute Resolution.[20] As proposed, the term "FINRA member" would mean "any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code of Arbitration Procedure for Customer Disputes ("Customer Code") or the Code of Arbitration Procedure for Industry Disputes ("Industry Code", and together with the Customer Code, "Codes") and/or to be treated as members of FINRA for purposes of the Codes, whether or not the membership has been terminated or cancelled."

FINRA believes the proposed change would clarify the forum's jurisdiction concerning a FINRA member, and would conform the definition in the By-Laws to that in the Customer Code and the Industry Code.[21] FINRA believes that the proposed change to add the term "FINRA member" is necessary to ensure that the definitions in the NASD Dispute Resolution By-Laws are consistent with the definitions in the Codes.

Industry Director or Industry Member and Public Director or Public Member

FINRA is proposing to modify the terms "Industry Director" or "Industry member" and "Public Director" or "Public member" in Articles I(k) and I(t), respectively. With regard to the term "Industry Director" or "Industry member", the proposed rule change would amend the NASD Dispute Resolution's By-Laws by separating these definitions into two definitions for ease of reference.[22]

FINRA is also proposing to amend the revised terms "Industry Director" and "Industry Member" to limit the look-back test that characterizes committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, to the past twelve months. The current provision uses a three-year look-back test. The proposed change would make the definitions of "Industry Director" and "Industry Member" under the NASD Dispute Resolution By-Laws consistent with the definitions of "Industry Director", "Industry Governor", and "Industry committee member" in the FINRA By-Laws.[23]

The proposal would also add the term "independent director" to the portion of the definitions of "Industry Director" and "Industry Member" that excludes outside directors of a broker or dealer. The term "independent director" is synonymous with outside director, but FINRA is proposing to add it to the exclusionary clause to harmonize the NASD Dispute Resolution By-Laws with the definition of "Industry Governor" in the FINRA By-Laws.[24]

Similarly, FINRA is proposing to modify the term "Public Director" or "Public member" by separating it into two definitions for ease of reference.[25] FINRA would also amend the proposed terms "Public Director" or "Public Member" to clarify that an individual's service as a public director of a self regulatory organization does not disqualify that person from serving as a Pubic Director or Public Member under NASD Dispute Resolution's By-Laws.

FINRA notes that the proposed changes to the definitions of "Industry Director" and "Industry Member" as well as "Public Director" and "Public Member" under the NASD Dispute Resolution By-Laws are generally consistent with similar amendments to the By-Laws of FINRA Regulation,[26] which the SEC approved in November 2008.[27] FINRA believes that the changes to the definitions would eliminate any ambiguity concerning the interpretation of the rules within the Corporation, and would ensure uniform application of the rules.

Person Associated With a Member or Associated Person of a Member

On June 5, 2009, FINRA filed a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Customer Code and Rule 13100(r) of the Industry Code to amend the definition of "associated person," streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.[28] The Commission approved the proposal on October 26, 2009.[29]

[16] 15 U.S.C. 78c(a)(4) and (a)(5).

[17] *See* Securities Exchange Act Rel. No. 44052 (March 8, 2001), 66 FR 15157 (March 15, 2001) (File No. SR–NASD–01–13).

[18] *Supra* note 3.

[19] The new term "electronic transmission" would be added as proposed Article I(k) of the By-Laws of NASD Dispute Resolution.

[20] The new term "FINRA member" would be added as proposed Article I(*o*) of the By-Laws of NASD Dispute Resolution.

[21] Rule 12100(*o*) of the Customer Code (definition of member) and Rule 13100(*o*) of the Industry Code (definition of member). In July 2007, the SEC approved an amendment to the Codes to clarify the term "member." *See* Securities Exchange Act Rel. No. 56029 (July 9, 2007), 72 FR 38641 (July 13, 2007) (File No. SR–NASD–2007–038).

[22] The term "Industry Director" will be defined in proposed Article I(r); "Industry Member" in proposed Article I(s).

[23] *See* FINRA By-Laws, Article I(s) and I(t).

[24] *See* FINRA By-Laws, Article I(t).

[25] The term "Public Director" will be defined in proposed Article I(w); "Public Member" in proposed Article I(x).

[26] Under the FINRA Regulation's By-Laws, the definitions of Industry Member and Public Member contain a reference to a NAC or committee member. *See* FINRA Regulation By-Laws, Articles I(y) and I(ii). The NAC is appointed and governed pursuant to FINRA Regulation By-Laws; FINRA Dispute Resolution does not use this committee, and thus, references thereto do not appear in NASD Dispute Resolution By-Laws.

[27] *Supra* note 5.

[28] *See* Securities Exchange Act Rel. No. 60159 (June 22, 2009), 74 FR 31779 (July 2, 2009) (File No. SR–FINRA–2009–041).

[29] *See* Securities Exchange Act Rel. No. 60878, 74 FR 56679 (Nov. 2, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated

Continued

Under that proposal, FINRA amended the definition of associated person under the Codes [30] to match the definition in FINRA's By-Laws.[31] The proposal amended the definition of "person associated with a member" in the Codes in two ways: (1) By inserting the word "other" before the second reference to "natural person" to clarify that the definition does not include corporate entities; and (2) by inserting the criterion that a natural person includes someone who has applied for registration.

FINRA is proposing to implement the same changes to the definition of associated person of a member in the NASD Dispute Resolution By-Laws, as have been approved recently by the Commission to same definitions under the Codes, to ensure uniform application of the definition.

Amendments to Article IV—Board of Directors

FINRA is proposing to make limited conforming changes to Article IV of the NASD Dispute Resolution By-Laws to parallel more closely the governance structure of the FINRA Board.

Section 4.3—Qualifications

The proposed rule change would amend Article IV, section 4.3(a) to reflect FINRA's current governance structure by establishing that NASD Dispute Resolution Board members would be drawn exclusively from the FINRA Board. The proposed rule change would also amend section 4.3(a) to streamline the composition of NASD Dispute Resolution's Board and implement a requirement that it contain more Public Directors than Industry Directors. Thus, section 4.3(a) would be amended to state that "the number of Public Directors shall exceed the number of Industry Directors." FINRA's By-Laws contain a similar requirement.[32]

The proposal would make other changes to Article IV, section 4.3 as follows:

- Re-structure the Board to remove the President of NASD Dispute Resolution. The President would not be deemed a Director, and therefore, the proposed rule change would delete several references to the President of NASD Dispute Resolution;[33]
- Clarify that the Chair of the FINRA Board and the Chief Executive Officer of FINRA shall be ex-officio non-voting members of the Board;
- Transfer the task of selecting the Chair of the NASD Dispute Resolution Board from the Board members to NASD Dispute Resolution's stockholder;[34]
- Eliminate the requirement that the Board select a Vice Chair; and
- State that the stockholder will designate the Chair at the same time that the Directors are elected.

Section 4.4—Election

The proposed rule change would eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected.

Section 4.5—Resignation

The proposal would remove the requirement that Directors submit written notice of resignation to the President. Under the proposal, such notice would be submitted to the Chair of the Board, instead of the President.

Section 4.6—Removal

The proposed rule change would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation.[35] The proposed amendment would reflect Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.[36]

Section 4.7—Disqualification

In connection with the proposed change to section 4.3(a), which would require the number of Public Directors to exceed the number of Industry Directors, the proposal would also amend section 4.7 to clarify that when a Director is disqualified from Board service and the Director's remaining term is not more than six months, the Board may continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director.

Section 4.8—Filling of Vacancies

Currently, Directors of FINRA Dispute Resolution are elected annually at the meeting of FINRA Dispute Resolution's stockholder meeting or at a special meeting dedicated to Board elections.[37] When the annual election of Directors is not held on the designated date, the NASD Dispute Resolution By-Laws charge the Directors to "cause such election" to be held.[38] The proposed rule change would confirm that the same process should be used by the FINRA Dispute Resolution Board when filling vacancies among its ranks. Thus, the proposal would amend section 4.8 to provide that the FINRA Board shall "cause the election" of a qualified Director to fill the vacant position.[39]

Approval of SR–2009–041, as Modified by Amendment No. 1).

[30] Rule 12100(r) of the Customer Code and Rule 13100(r) of the Industry Code define "person associated with a member" to mean: (1) A natural person registered under the Rules of FINRA; or (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

[31] FINRA's By-Laws define "person associated with a member or associated person of a member" as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member. *See* By-Laws of the Corporation, Article I, Definitions (rr).

[32] *See* By-Laws of the Corporation, Article VII (Board of Governors), section 4(a).

[33] *See* NASD Dispute Resolution By-Laws, Article IV, Sections 4.3(a) (Qualifications), 4.5 (Resignation), 4.11(c) (Meetings), 4.13(f) (Executive Committee), and 4.13(g) (Finance Committee). Section 141(c)(2) of the General Corporation Law of the State of Delaware provides that "[t]he board of directors may designate 1 or more committees, each committee to consist of 1 or more *directors* of the corporation." (Emphasis added). Committees of the board, therefore, may be comprised exclusively of board members. In addition, any committee of the board that is delegated any power and authority of the board, such as the Executive Committee, must be comprised exclusively of board members. *See* Delaware General Corporation Law, section 141(c)(2).

[34] *See* Delaware General Corporation Law section 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

[35] The sole stockholder of the capital stock of FINRA Dispute Resolution, Inc. is FINRA, Inc. *See* Article VIII, section 8.1 (Sole Stockholder).

[36] *See* Delaware General Corporation Law, section 141(k). As a practical matter, the FINRA Board generally would be asked to pass a resolution authorizing an officer of FINRA to execute a sole stockholder consent on behalf of FINRA (who is the sole stockholder of FINRA Dispute Resolution) before such a consent is executed. As such, the FINRA Board would have a voice in the matter, but as a matter of Delaware law, the consent authorizing the removal must be executed by a duly authorized officer of FINRA in FINRA's capacity as sole stockholder.

[37] *See* current NASD Dispute Resolution By-Laws, Article IV, section 4.4 (Election).

[38] *Id.*

[39] Pursuant to Delaware law, FINRA, as the sole stockholder of FINRA Dispute Resolution, has the authority to execute a stockholder consent electing an individual to the fill the vacancy pursuant to directions of the FINRA Board. Alternatively, the FINRA Board may pass a resolution making it known who they would like appointed to fill the vacancy. Under this scenario, it is likely that the remaining members of the FINRA Dispute

Section 4.9—Quorum and Voting

The proposed rule change would remove a cross-reference to section 4.14(b) in the quorum provision, and also amend the provision to clarify that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.

Section 4.12—Notice of Meetings; Waiver of Notice

The proposal would clarify the conditions under which the NASD Dispute Resolution Board may meet. The current NASD Dispute Resolution By-Laws instruct that a Director may waive notice of a Board meeting by being present at the meeting, so long as the Director did not attend the meeting solely to object to the meeting taking place.[40] FINRA is proposing to amend section 4.12(c) to clarify that a Board meeting is a legal meeting if all Directors are present and no Director is present solely for the purpose of objecting to the meeting taking place.

The proposed rule change also would amend section 4.12(a) and (b) to replace the phrase "telegraph, telefax, cable, radio, or wireless" with the new term "electronic transmission."[41] For an explanation of the term "electronic transmission," see the discussion under "Amendments to Article I—Definitions" above.

Section 4.13—Committees

As explained under the discussion of section 4.3(a), the proposal would implement a requirement that the FINRA Dispute Resolution Board contain more Public Directors than Industry Directors.[42] In furtherance of this change, references throughout Article IV to balancing "Industry" and "Non-Industry" Board members would be replaced with references to balancing "Industry" and "Public" Board members. Similarly, the proposal would remove the requirement that the Executive Committee include at least one Non-Industry Member and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Dispute Resolution's Executive Committee of the Board.[43]

Section 4.15—Action Without Meeting

The proposal would make a related change to section 4.15 to eliminate the requirement that unanimous consent for taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the proposal would require the consent to be "in accordance with applicable law," which in the instance of FINRA Dispute Resolution, would be Delaware law.

FINRA believes that the proposed amendments to Article IV would align FINRA Dispute Resolution's Board structure with that of FINRA and its other subsidiary, and conform FINRA Dispute Resolution's corporate practices to Delaware law.

Amendment to Article V—Officers, Agents, and Employees

Section 5.1—Officers

As explained under the discussion of Article IV, section 4.3, the proposed rule change would re-structure the Board to remove the President of FINRA Dispute Resolution as a Director of the Board.[44] In connection with this change, the proposal would remove a reference to the President from section 5.1, so that the amended language would state, in relevant part, that none of the officers need to be Directors of FINRA Dispute Resolution.

Amendments to Article VIII—Capital Stock

Section 8.3—Signatures

The proposed rule change would amend several provisions regarding FINRA Dispute Resolution's capital stock. Currently, under section 8.3(a), FINRA's approach to the corporate law issue of signing certificates representing shares of FINRA Dispute Resolution capital stock is to have these shares signed by FINRA Dispute Resolution officers. Under the proposed re-structuring of the Board, FINRA Dispute Resolution would not have an officer as Chair of the Board. Thus, FINRA is proposing to remove the provision that permits the Chair of the Board to sign stock certificates, and limit the authority to sign such certificates to the President, Vice President, Secretary or Treasurer of FINRA Dispute Resolution.

FINRA is proposing to amend section 8.3(b) to remove the limitations on the type of signatures required on certificates of capital stock. The current provision states, in relevant part, that "if any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile." The proposed amendment would eliminate limitations on when signatures on certificates representing shares of FINRA Dispute Resolution's capital stock may be facsimiles and permit any signature to be a facsimile. Thus, under the proposal, the provision would be amended to state that "any signature on the stock certificate may be a facsimile." FINRA believes this change would be consistent with current practice that permits its certificates representing capital stock to be sealed with a facsimile of FINRA Dispute Resolution's corporate seal.

Section 8.4—Stock Ledger

Currently, section 8.4(a) of the NASD Dispute Resolution By-Laws requires that the FINRA Dispute Resolution Secretary, or another officer, employee, or agent, keep a record of FINRA Dispute Resolution's capital stock ownership and "the number of shares represented by each such certificate." FINRA is proposing to change several references to "capital stock" to "certificates representing shares of capital stock" or similar constructions, instead of "certificates for shares of capital stock."[45] This change would make NASD Dispute Resolution's By-Laws more consistent with the language of the applicable section of the General Corporation Law of the State of Delaware.[46]

Amendments to Article IX—Miscellaneous Provisions

Section 9.3—Waiver of Notice

FINRA is proposing to amend section 9.3(a) of the NASD Dispute Resolution By-Laws to replace the phrase "telegraph, telefax, cable, radio, or wireless" with the new term "electronic transmission."[47]

Resolution Board will follow the advice of its controlling stockholder and elect the recommended individual. *See* Delaware General Corporation Law, section 223.

[40] *See* current NASD Dispute Resolution By-Laws, Article IV, section 4.12(b) (Notice of Meeting; Waiver of Notice) and Article IX, section 9.3(b) (Waiver of Notice).

[41] FINRA proposed similar changes to Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) of the FINRA Regulation By-Laws. *See* Securities Exchange Act Rel. No. 59696 (April 2, 2009), 74 FR 16020 (April 8, 2009) (File No. SR–FINRA–2009–020).

[42] *See also* proposed Article I(r) (Industry Director); proposed Article I(s) (Industry Member); proposed Article I(w) (Public Director); and proposed Article I(x) (Public Member).

[43] *See* Article IV, section 4.12(f) (Executive Committee).

[44] *Supra* note 32.

[45] The proposal would delete as imprecise the words "certificates for" in the discussion of potential registration of shares of capital stock. *See* proposed NASD Dispute Resolution By-Laws, Article VIII, section 8.4(b) (Stock Ledger), 8.5 (Transfers of Stock), 8.6 (Cancellation), and 8.7 (Lost, Stolen, Destroyed, and Mutilated Certificates).

[46] *See* Delaware General Corporation Law section 158.

[47] *See supra* note 40, and the explanation of the term "electronic transmission" under "Amendments to Article I—Definitions."

Conforming Changes Relating to the New FINRA Name and Other Technical Changes

FINRA is proposing to implement certain other non-substantive changes to all articles of the NASD Dispute Resolution By-Laws. The proposed rule change would make certain non-substantive changes to the NASD Dispute Resolution By-Laws as follows:

- "The NASD" or "NASD" would be replaced with "FINRA" or "the Corporation;"
- "NASD Dispute Resolution" would be changed to "FINRA Dispute Resolution;"
- "The Rules of the Association" would be replaced with "the Rules of the Corporation;"
- "National Nominating Committee" would be replaced with "Nominating Committee;"
- A reference to "FINRA Regulation" would be added; and
- "Association" would be replaced with "Corporation."

FINRA is also proposing to amend Article II, section 2.1 to change the name and address of the registered agent from The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801 to Corporation Creations Network Inc., 1308 Delaware Avenue, Wilmington, DE 19806.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,[48] in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA and NASD rules and the Federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,[49] which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposed composition of its Dispute Resolution Board would fairly and effectively represent users of the dispute resolution forum, and would help resolve dispute resolution issues in a manner that will redound to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–007 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2010–007. 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 Web site viewing and printing in the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–FINRA–2010–007 and should be submitted on or before March 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4235 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[48] 15 U.S.C. 78o–3(b)(2).

[49] 15 U.S.C. 78o–3(b)(4).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61577; File No. SR–BX–2010–017]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Effective Date of the Rule Governing the Exchange's Directed Order Process on the Boston Options Exchange

February 24, 2010.

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 February 23, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the Boston Options Exchange ("BOX") from February 26, 2010 to April 30, 2010. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 14, 2006, the Exchange proposed an amendment to the BOX Rules governing the Directed Order[5] process on BOX.[6] The Rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant ("EP") the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, ("Pilot Program") while the Securities and Exchange Commission ("Commission") considered a corresponding Exchange proposal[7] to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,[8] while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006, January 16, 2007, July 2, 2007, January 18, 2008, January 26, 2009, May 21, 2009 and November 24, 2009 the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on BOX from September 30, 2006 until January 31, 2007,[9] from January 31, 2007 until July 31, 2007,[10] from July 31, 2007 until January 31, 2008,[11] from January 31, 2008 until January 31, 2009,[12] from January 31, 2009 until May 29, 2009,[13] from May 29, 2009 until November 30, 2009[14] and from November 30, 2009 until February 26, 2010,[15] respectively, while the Commission considered the corresponding Exchange proposal to amend the BOX Rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from February 26, 2010 to April 30, 2010.[16] In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend the BOX Rules before April 30, 2010, the amended rule governing the Directed Order process on the BOX will cease to be effective at the time of that decision.

2. Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from February 26, 2010 to April 30, 2010. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[6] *See* Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14).

[7] *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[8] *See* Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR–BSE–2006–29).

[9] *See* Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR–BSE–2006–38).

[10] *See* Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR–BSE–2007–01).

[11] *See* Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR–BSE–2007–31).

[12] *See* Securities Exchange Act Release No. 57195 (January 24, 2008), 73 FR 5610 (January 30, 2008) (SR–BSE–2008–04).

[13] *See* Securities Exchange Act Release No. 59311 (January 28, 2009), 74 FR 6071 (February 4, 2009) (SR–BX–2009–007).

[14] *See* Securities Exchange Act Release No. 59983 (May 27, 2009), 74 FR 26445 (June 2, 2009) (SR–BX–2009–027).

[15] *See* Securities Exchange Act Release No. 61065 (November 25, 2009), 74 FR 62860 (December 1, 2009) (SR–BX–2009–076).

[16] In the event that the issue of anonymity in the Directed Order process is not resolved by April 30, 2010 the Exchange will consider whether to submit another filing under Rule 19b–4(f)(6) extending this rule and system process.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [19] of the Act and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [22] 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, as specified in Rule 19b–4(f)(6)(iii),[23] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice without interruption and clarify that Directed Orders on BOX are not anonymous.[24] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–017 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2010–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–017 and should be submitted on or before March 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61579: File No. SR–BX–2010–015]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Certain Provisions of the Options Listing Procedures Plan Into the Rules of the Boston Options Exchange Facility

February 24, 2010.

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 February 10, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange Group, LLC ("BOX") to codify certain provisions of the Options Listing Procedures Plan ("OLPP") into the BOX Rules. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The OLPP was approved by the Securities and Exchange Commission (the "Commission") on July 6, 2001 and has been amended several times.[5] The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation ("OCC") to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into the BOX Rules so that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP have submitted, or will be submitting, similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into the BOX Rules.

OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Options Series ("LEAPS"). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on Exchange Traded Fund Shares ("ETFs"), or options on Trust Issued Receipts ("TIRs"). The Exchange is proposing to codify the changes made to the OLPP by Amendment 1 as new subparagraph (c) to Chapter IV, Section 8 (Long-Term Options Contracts) of the BOX Rules. Amendment 2 provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange is proposing to codify the changes made to the OLPP by Amendment 2 as new subparagraph (d) to Chapter IV, Section 8 of the BOX Rules.

Strike Setting Parameters

Amendment 3 to the OLPP adopted uniform objective standards to the range of options series exercise (or strike) prices available for trading on the OLPP's Sponsor Exchanges as a quote mitigation strategy. The Exchange is proposing to codify the changes made to the OLPP by Amendment 3 by adding certain new rule text to Chapter IV, Section 6(b) of the BOX Rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change codifies certain provisions of the OLPP that were previously approved by the Commission[8] and does not; (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition and; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing.[9]

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–BX–2010–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[5] *See e.g.,* Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order Approving a Proposed Options Listing Procedures Plan); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (Order Granting Permanent Approval to Amendment No. 1 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options); 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008) (Order Granting Permanent Approval to Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (Order Approving Amendment No. 3 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 5.

[9] 17 CFR 240.19b–4(f)(6). In addition, as required under Rule 19b–4(f)(6)(iii), the Exchange has submitted to the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–015. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–015 and should be submitted on or before March 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4234 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61556; File No. SR–NYSEAmex–2010–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NYSE Amex LLC Changing Certain NYSE Amex Equities Rules To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

February 22, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 16, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to certain NYSE Amex Equities Rules to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The Exchange proposes to apply these changes retroactively to February 8, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to adopt changes to certain NYSE Amex Equities Rules to correspond with rule changes filed by FINRA and approved by the Commission. The Exchange proposes to apply these changes retroactively to February 8, 2010, the same effective date for FINRA's rule changes.[5] The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and Exchange Rules and that, as applicable, Exchange Rules maintain their status as Common Rules under the 17d–2 Agreement.[6]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act,[7] the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "17d–2 Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the 17d–2 Agreement effective December 15, 2008.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (order approving SR–FINRA–2008–067). FINRA also recently filed for immediate effectiveness to (i) adopt non-substantive technical changes to consolidated FINRA Rule 4521(d), and (ii) amend FINRA Incorporated NYSE Rule 312(g). *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010) (SR–FINRA–2010–004). *See also* SR–FINRA–2010–008, filed on February 4, 2010. These changes are incorporated in this rule filing.

[5] *See* FINRA Regulatory Notice 09–71 (December 7, 2009).

[6] As provided in paragraph 2(b) of the 17d–2 Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

[7] 15 U.S.C. 78a, *et seq.*

[8] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the 17d–2 Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[9]

Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA recently adopted consolidated FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) as part of its rule set governing financial responsibility of member firms. FINRA also amended consolidated FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), as well as Section 4(g) of Schedule A of the FINRA By-Laws to reflect the adoption of the new Rules.[10]

Because they are incorporated with or replaced by these new consolidated FINRA Rules, FINRA also deleted and/or amended certain FINRA Incorporated NYSE Rules and Rule Interpretations, including 312(g)–(h) (Changes Within Member Organizations), 313(d) (Submission of Partnership Articles—Submission of Corporate Documents), 313(d)/01 –/02 (Opinion of Counsel), 325 (Capital Requirements Member Organizations), 325(c)(1)/01 (Long Put or Call Options), 326(a) (Growth Capital Requirement), 326(b) (Business Reduction Capital Requirement), 326(c) (Unsecured Loans and Advances), 326(d) (Reduction of Elimination of Loans and Advances), 328 (Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements), 416.20 (Questionnaires and Reports), 416/01 (Gold and Silver Offerings), 418 (Audit), 420 (Reports of Borrowings and Subordinate Loans For Capital Purposes) and 421 (Periodic Reports).[11]

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete and/or amend Rules 312(g)–(h)-, 313(d)-, 325-, 326(a)–(d)-, 328-, 416.20-, 418-, 420- and 421- NYSE Amex Equities, and replace them with proposed Rules 4110-, 4120-, 4130-, 4140- and 4521- NYSE Amex Equities, which are substantially similar to the new FINRA Rules.[12]

As proposed, Rules 4110-, 4120-, 4130-, 4140- and 4521- NYSE Amex Equities adopt the same language as the corresponding consolidated FINRA Rules, except for substituting for or adding to, as needed, the term "Exchange" for "FINRA" and the term "member organization" for the term "member", and making corresponding technical changes that reflect the difference between NYSE Amex's and FINRA's membership structures.

In addition, the Exchange proposes other changes to the NYSE Amex Equities version of the Rules in order to apply them to the Exchange. First, in proposed Rules 4110(a)- and 4140(a)- NYSE Amex Equities, the Exchange proposes to amend FINRA's version of the Rules referring to "FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate," to remove this language as it is inapplicable to the Exchange. As amended, the Exchange would retain the flexibility to arrange to have FINRA conduct the actual oversight and application of the proposed Rules pursuant to the 17d–2 Agreement or a Regulatory Services Agreement as warranted.

Second, in proposed Rules 4110-, 4120- and 4130- NYSE Amex Equities, the Exchange proposes to add cross-references to NYSE Amex Disciplinary Rule 475. Similar to FINRA Rule 9557, NYSE Amex Disciplinary Rule 475 provides the Exchange with the ability to take summary action against a member or member organization that is facing financial or operational difficulties subject to certain due process considerations, including notice and an opportunity to be heard. The Exchange believes it should retain its current disciplinary procedures for addressing non-FINRA members and member organizations that face financial or operational difficulties.

Finally, in proposed Rules 4140(b)- and 4521(e)- NYSE Amex Equities, the Exchange proposes to amend the language from FINRA's version of the Rules referring to Schedule A, Section 4(g) of the FINRA By-Laws to simply incorporate the language of Section 4(g) into the NYSE Amex Equities version of the Rules. Accordingly, proposed Rules 4140(b)- and 4521(e)- NYSE Amex Equities specify that member organizations that fail to timely file any report, notification or information pursuant to those Rules will be subject to a late fee of $100 per day, for a period not to exceed 10 business days. Under the proposed Rules, requests for an extension of time must be submitted at least three business days prior to the due date of the report, notification or information required to be provided.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and further the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange Equities Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members. To the extent the Exchange has proposed

certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated 17d–2 Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[9] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Common Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[10] *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). *See also* SR–FINRA–2010–008, filed on February 4, 2010.

[11] FINRA deleted references to FINRA Incorporated NYSE Rules 313.14 (A–B–C agreements) and 313.18 (Sole board member provision) as part of its clean-up of Rule 313. *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009). Rule 313—NYSE Amex Equities does not have these references.

FINRA also deleted certain FINRA Incorporated NYSE Rule Interpretations. *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009). The Exchange has not adopted a corresponding version of the NYSE Rule Interpretations and so those rule changes are not applicable to the Exchange and are not included in this filing.

[12] NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2010–10.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed rules. The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and NYSE Amex Equities Rules and that, as applicable, the NYSE Amex Equities Rules maintain their status as Common Rules under the 17d-2 Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–Amex 2010–13 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex-2010–13. 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 Web site viewing and printing, in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2010–13 and should be submitted on or before March 23, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[15] and Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest [16] because the proposal will promote harmonization between the Exchange Equities Rules and FINRA Rules, resulting in less burdensome and more efficient regulatory compliance for Common Members. The Commission also believes that the Exchange's proposal to retroactively apply the proposed rule change to February 8, 2010 is consistent with the requirements of the Section 6 of the Act [17] and the rules and regulations thereunder applicable to a national securities exchange [18] because: (1) The proposed rule changes will become operative and effective at the same time as FINRA's rule changes; (2) there will be no regulatory gaps between the FINRA and NYSE Amex Equities Rules; and (3) that, as applicable, the NYSE Amex Equities Rules will maintain their status as Common Rules under the 17d-2 Agreement. The Commission believes that these factors will further promote regulatory compliance and efficiency.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission believes that good cause exists for accelerated approval of the proposed rule change because it raises no novel issues and is consistent with the FINRA rule filings previously approved by or filed with the Commission on which it is based.[19] Except as has been specifically noted and subject to a number of technical changes necessary to apply the Rules to the Exchange, the proposed rule changes will conform certain NYSE Amex Equities Rules and Rule Interpretations to FINRA's amendments to corresponding FINRA Incorporated NYSE Rules and Rule Interpretations and FINRA's adoption of consolidated FINRA Rules 4110, 4120, 4130, 4140 and 4521 in furtherance of the consolidation of the member firm regulation functions of NYSER and FINRA. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[20] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change, (SR–NYSEAmex-2010–13), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4229 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* 78f(b).

[16] *See* 78f(b)(5).

[17] 15 U.S.C. 78f.

[18] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 78c(f).

[19] *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). *See also* SR–FINRA–2010–008, filed on February 4, 2010.

[20] *See* 15 U.S.C. 78s(b)(2).

[21] *See id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61565; File No. SR–CBOE–2010–016]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Inadvertent Numbering Inconsistency

February 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to correct a numbering inconsistency in CBOE Rule 6.53 that was unintentionally created by a recent CBOE rule filing.[5] The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CBOE–2009–097, an error was inadvertently made in the ordering of Rule 6.53. The subsection of Rule 6.53—Certain Types of Orders Defined—regarding Reserve Orders was unintentionally ordered as subsection (p), when there already exists a subparagraph (p) in that rule. This filing is made in order to correct that error and to re-order the subsection regarding Reserve Orders as subsection (t) to Rule 6.53. No substantive changes to CBOE rules would be made by this proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed correction would protect investors and the public interest by eliminating any potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–016 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–CBOE–2010–016. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 61248 (December 29, 2009), 75 FR 498 (January 5, 2010) (SR–CBOE–2009–097).

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

submission,[13] 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 Web site viewing and printing 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 CBOE. 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–CBOE–2010–016 and should be submitted on or before March 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4231 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[13] The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.org/Legal,* on the Commission's Web site at *http://www.sec.gov,* at CBOE, and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61557; File No. SR–NYSE–2010–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange LLC Changing Certain NYSE Rules and Rule Interpretations To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

February 22, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on February 16, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to certain NYSE Rules and Rule Interpretations to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The Exchange proposes to apply these changes retroactively to February 8, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to adopt changes to certain NYSE Rules and Rule Interpretations to correspond with rule changes filed by FINRA and approved by the Commission. The Exchange proposes to apply these changes retroactively to February 8, 2010, the same effective date for FINRA's rule changes.[5] The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and NYSE Rules and that, as applicable, the NYSE Rules maintain their status as Common Rules under the 17d-2 Agreement.[6]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act,[7] NYSE, NYSER and FINRA entered into an agreement (the "17d-2 Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the 17d-2 Agreement effective December 15, 2008.[8]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[9]

[4] *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (order approving SR–FINRA–2008–067). FINRA also recently filed for immediate effectiveness to (i) adopt non-substantive technical changes to consolidated FINRA Rule 4521(d), and (ii) amend FINRA Incorporated NYSE Rule 312(g). *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010) (SR–FINRA–2010–004). *See also* SR–FINRA–2010–008, filed on February 4, 2010. These changes are incorporated in this rule filing.

[5] *See* FINRA Regulatory Notice 09–71 (December 7, 2009).

[6] As provided in paragraph 2(b) of the 17d-2 Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

[7] 15 U.S.C. 78a, *et seq.*

[8] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the 17d-2 Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated 17d-2 Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the 17d-2 Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[9] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Common Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

Proposed Conforming Amendments to NYSE Rules

FINRA recently adopted consolidated FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) as part of its rule set governing financial responsibility of member firms. FINRA also amended consolidated FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), as well as Section 4(g) of Schedule A of the FINRA By-Laws to reflect the adoption of the new Rules.[10]

Because they are incorporated with or replaced by these new consolidated FINRA Rules, FINRA also deleted and/or amended certain FINRA Incorporated NYSE Rules and Rule Interpretations, including 312(g)—(h) (Changes Within Member Organizations), 313(d) (Submission of Partnership Articles—Submission of Corporate Documents), 313(d)/01 -/02 (Opinion of Counsel), 325 (Capital Requirements Member Organizations), 325(c)(1)/01 (Long Put or Call Options), 326(a) (Growth Capital Requirement), 326(b) (Business Reduction Capital Requirement), 326(c) (Unsecured Loans and Advances), 326(d) (Reduction of Elimination of Loans and Advances), 328 (Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements), 416.20 (Questionnaires and Reports), 416/01 (Gold and Silver Offerings), 418 (Audit), 420 (Reports of Borrowings and Subordinate Loans For Capital Purposes) and 421 (Periodic Reports).[11]

To harmonize the NYSE Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete and/or amend NYSE Rules and Rule Interpretations 312(g)—(h), 313(d), 313(d)/01 -/02, 325, 325(c)(1)/01, 326(a)—(d), 328, 416.20, 416/01, 418, 420 and 421, and replace them with proposed NYSE Rules 4110, 4120, 4130, 4140 and 4521, which are substantially similar to the new FINRA Rules.[12]

As proposed, NYSE Rules 4110, 4120, 4130, 4140 and 4521 adopt the same language as the corresponding consolidated FINRA Rules, except for substituting for or adding to, as needed, the term "Exchange" for "FINRA" and the term "member organization" for the term "member", and making corresponding technical changes that reflect the difference between NYSE's and FINRA's membership structures.

In addition, the Exchange proposes other changes to the NYSE version of the Rules in order to apply them to the Exchange. First, in proposed NYSE Rules 4110(a) and 4140(a), the Exchange proposes to amend FINRA's version of the Rules referring to "FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate," to remove this language as it is inapplicable to the Exchange. As amended, the Exchange would retain the flexibility to arrange to have FINRA conduct the actual oversight and application of the proposed Rules pursuant to the 17d-2 Agreement or a Regulatory Services Agreement as warranted.

Second, in proposed NYSE Rules 4110, 4120 and 4130, the Exchange proposes to add cross-references to NYSE Rule 475. Similar to FINRA Rule 9557, NYSE Rule 475 provides the Exchange with the ability to take summary action against a member or member organization that is facing financial or operational difficulties subject to certain due process considerations, including notice and an opportunity to be heard. The Exchange believes it should retain its current disciplinary procedures for addressing non-FINRA members and member organizations that face financial or operational difficulties.

Finally, in proposed NYSE Rules 4140(b) and 4521(e), the Exchange proposes to amend the language from FINRA's version of the Rules referring to Schedule A, Section 4(g) of the FINRA By-Laws to simply incorporate the language of Section 4(g) into the NYSE version of the Rules. Accordingly, proposed NYSE Rules 4140(b) and 4521(e) specify that member organizations that fail to timely file any report, notification or information pursuant to those Rules will be subject to a late fee of $100 per day, for a period not to exceed 10 business days. Under the proposed Rules, requests for an extension of time must be submitted at least three business days prior to the due date of the report, notification or information required to be provided.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and further the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange states that making the proposed rule change retroactive to February 8, 2010 would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and NYSE Rules and that, as applicable, the NYSE Rules maintain their status as Common Rules under the 17d-2 Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[10] *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). *See also* SR–FINRA–2010–008, filed on February 4, 2010.

[11] FINRA also deleted references to FINRA Incorporated NYSE Rules 313.14 (A–B–C agreements) and 313.18 (Sole board member provision) as part of its clean-up of Rule 313. *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009). The Exchange also proposes to delete those references in NYSE Rule 313.

[12] NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSEAmex-2010–13.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–10 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–10 and should be submitted on or before March 23, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the Exchange's proposal to retroactively apply the proposed rule change to February 8, 2010 is consistent with the requirements of the Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[17] Approving the proposed rule change, and making such approval retroactive to February 8, 2010, would ensure that the proposed rule changes are operative and effective at the same time as FINRA's rule changes, that there are no regulatory gaps between the FINRA and NYSE Rules and that, as applicable, the NYSE Rules maintain their status as Common Rules under the 17d–2 Agreement

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register.** The Commission believes that good cause exists for accelerated approval of the proposed rule change because it raises no novel issues and is consistent with the FINRA rule filings previously approved by or filed with the Commission on which it is based.[18] Except as has been specifically noted and subject to a number of technical changes necessary to apply the Rules to the Exchange, the proposed rule changes will conform certain NYSE Rules and Rule Interpretations to FINRA's amendments to corresponding FINRA Incorporated NYSE Rules and Rule Interpretations and FINRA's adoption of consolidated FINRA Rules 4110, 4120, 4130, 4140 and 4521 in furtherance of the consolidation of the member firm regulation functions of NYSER and FINRA. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change, (SR–NYSE–2010–10), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4228 Filed 3–1–10; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 78c(f).

[17] *See* 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010). *See also* SR–FINRA–2010–008, filed on February 4, 2010.

[19] *See* 15 U.S.C. 78s(b)(2).

[20] *See id.*

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 20, 2009 (74 FR 11992–11993).

DATES: Comments must be submitted on or before April 1, 2010.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, Ph.D., Office of Behavioral Safety Research, National Highway Traffic Safety Administration, NTI–131, Room W46–500, 1200 New Jersey Ave., SE., Washington, DC 20590. Dr. Atkins' phone number is 202–366–5597 and his e-mail address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Survey of Speeding Attitudes and Behavior: 2010.

Type of Request: New information collection requirement.

Abstract: Data from previous studies by the National Highway Traffic Safety Administration (NHTSA) has shown that 31 percent of all fatal crashes are directly traceable to excessive speed. In 2008, 11,674 people died in excessive speed-related crashes. The cost of these crashes is approximately 40 billion dollars per year. Surveys of drivers' attitudes toward speeding have demonstrated a strong correlation between drivers' attitudes towards speeding and other driving behaviors and actual traffic outcomes. Models based on self-reported measures of intentions and attitudes are used to predict traffic behaviors and design interventions to reduce speeding and other hazardous traffic actions. Some of these models stress the importance of attitude, habits and the interaction of habit with intention.

NHTSA proposes to conduct a 2010 National Survey of Speeding Attitudes and Behavior by telephone among a sample of 6,000 adults (age 16 and older). NHTSA's information needs require a telephone survey of a national probability sample of drivers in the United States that will provide insight into why drivers speed and which methods of enforcement would discourage them from speeding. The questionnaire will contain items on the extent to which drivers speed, demographic and typological descriptions of speeders, locations and times when speeding is most frequent, attitudes and perceptions about speeding, reasons and motivations for speeding, knowledge of measures to deter speeding, attitudes towards measures to deter speeding, and correlates of speeding behavior. In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey is the third in the series, which began in 1997. The 2010 survey will repeat many questions from previous surveys in order to monitor changes over time, and will also include new questions on emerging speed-related technologies.

Affected Public: Randomly selected members of the general public age 16 and older, including those in landline telephone households as well as those who primarily or exclusive use a cellular phone. Participation by all respondents would be voluntary and anonymous.

Estimated Total Annual Burden: 2,005 hours (15 pretest interviews averaging 20 minutes per interview, followed by 6,000 interviews administered to the final survey sample averaging 20 minutes per interview).

Comments Are Invited on the Following

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2010–4194 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), gives notice that the Board has requested from the Office of Management and Budget (OMB) an extension of approval for the two currently approved collections described below.

The Board is seeking comments regarding one or both of these collections concerning (1) whether the collection is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate. Submitted comments will be addressed in a subsequent notice and will also be submitted to OMB as part of the Board's request for approval.

DATES: *Deadline:* Persons wishing to comment on one or both of these information collections should submit comments by April 1, 2010.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, and should refer to the title of the specific collection(s) commented upon. These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana Achanta, Surface Transportation Board Desk Officer, by fax at (202) 395–6974; by mail at Room 10235, 725 17th Street, NW., Washington, DC 20503; or by e-mail at *OIRA_SUBMISSION@OMB.EOP.GOV*.

FOR FURTHER INFORMATION CONTACT: Cynthia T. Brown, (202) 245–0350. For a copy of the regulations pertaining to the information collection(s), contact Cynthia T. Brown at (202) 245–0350 or *brownc@stb.dot.gov*.

Subjects: In this notice the Board is requesting that comments be sent to OMB on the following information collections:

Collection Number One

Title: Maps Required in Abandonment Exemption Proceedings.

OMB Control Number: 2140–0008.

Form Number: None.

Type of Review: Extension without change.

Respondents: Railroads initiating abandonment exemption proceedings.

Number of Respondents: 80.

Estimated Time per Response: 1 hour, based on average time reported in informal survey of respondents conducted in 2009.

Frequency of Response: 1.

Total Annual Burden Hours: 80.

Total Annualized Non-Hourly Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.50(d)(2)and 1152.60(b), the Board requires in each abandonment exemption proceeding a detailed map of the rail line, depicting the line's relation to other rail lines, roads, water routes, and population centers. The Board uses this information to determine the scope and the impact of the proposed abandonment. In addition, this information is posted on the Board's Web site and serves as a form of notice to current and/or potential shippers, and to persons who might want to make an offer of financial assistance under 49 U.S.C. 10904; acquire the line as a trail under the National Trails System Act,

16 U.S.C 1247(d); or acquire the line for another public purpose under 49 U.S.C. 10905.

Collection Number Two

Title: System Diagram Maps (or, in the case of small carriers, the alternative narrative description of rail system).

OMB Control Number: 2140–0003.

Form Number: None.

Type of Review: Extension without change.

Respondents: Common carrier freight railroads that are either new or reporting changes in the status of one or more of their rail lines.

Number of Respondents: 3.

Estimated Time per Response: 7.1 hours, based on average time reported in informal survey of respondents conducted in 2009.

Frequency of Response: 1.

Total Annual Burden Hours: 21 hours.

Total Annualized Non-Hourly Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.10–1152.13, all railroads subject to the Board's jurisdiction are required to keep current system diagram maps (SDMs) on file, or alternatively in the case of a Class III carrier (a carrier with assets of not more than $20 million in 1991 dollars), to submit the same information in narrative form. The information sought in this collection identifies all lines in a particular railroad's system, categorized to indicate the likelihood that service on a particular line will be abandoned and/or whether service on a line is currently provided under the financial assistance provisions of 49 U.S.C. 10904. Carriers are obligated to amend these maps as necessary to update the SDM or description as line designations change. The Board uses this information to facilitate reasoned decision making. In addition, this information, which is available to the public from the carrier by request, 49 CFR 1152.12(c)(3), may serve as notice to the shipping public of the carrier's intent to abandon or retain a line.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. A 60-day notice and request for comments regarding the collection described above was published on Nov. 12, 2009 (74 FR 58368). Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the **Federal Register**, concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 25, 2010.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–4330 Filed 3–1–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation improvement project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Bryan Dillon, Area Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0182, E-mail: *Bryan.Dillon@DOT.gov*. The Utah Department of Transportation (UDOT) contact is Chuck Easton, Region 2 Environmental Lead, 2010 South 2760 West, Telephone: (801) 975–4923, e-mail: *ceaston@utah.gov*.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with UDOT, intends to prepare an EIS on a proposal to analyze and address the regional transportation connectivity needs on the west side of the Salt Lake Valley in the area bounded by 6200 South, 4700 South, Bangerter Highway and Redwood Road.

To provide for local and regional travel demands, the regional transportation plan developed by the local Metropolitan Planning Organization, Wasatch Front Regional Council (WFRC), has identified the need for an improved transportation system in the study area. Alternatives under consideration include (1) taking no action (no-build); (2) transportation system management/travel demand management; and (3) build alternatives to be considered include, but are not limited to: (1) A collector roadway system; (2) addition of a grade-separated interchange at 5400 South and I–215 and/or improvements to adjacent grade-separated interchanges; (3) arterial roadway capacity and operational improvements; (4) transit; (5) combinations of any of the above; and (6) other feasible alternatives identified during the scoping process.

The public, as well as Federal, State, and local agencies, will be invited to participate in project scoping to ensure that a full range of alternatives is considered and that all appropriate environmental issues and resources are evaluated. The scoping process will include opportunities to provide comments on the purpose and need for the project, potential alternatives, and social, economic, and environmental issues of concern. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

The public will be invited to participate in scoping meeting which will be held in an open house format at locations and dates to be determined. In addition, a public hearing will be held following the release of the draft EIS. The draft EIS will be available for public and agency review and comment before the public hearing. Public notice advertisements, direct mailings, and other means of notification will be used to notify interested parties of the time and place of the public meetings and the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above by April 1, 2010.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: 24 February 2010.

Bryan Dillon,

Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2010–4267 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16564; FMCSA–2007–0071]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 31, 2010. Comments must be received on or before April 1, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2003–16564; FMCSA–2007–0071, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Alberto Blanco, Michael B. Canedy, Larry A. Cossin, Charles W. Cox, Gary W. Ellis, Dennis J. Evers, Hector O. Flores, W. Roger Goold, Lee Guse, Steven W. Halsey, Clifford J. Harris, John C. Henricks, Thomas M. Leadbitter, John L. Lewis, Jonathan P. Lovel, Kent S. Reining, Enrique G. Salinas, Jr., Anthony T. Smith, Richard W. Wylie.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 74699; 69 FR 10503; 71 FR 6869; 71 FR 19928; 73 FR 6242; 73 FR 16950). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 1, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4240 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0291]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective March 2, 2010. The exemptions expire on March 2, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov.*

Background

On December 11, 2009, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (74 FR 65842). That notice listed 24 applicants' case histories. The 24 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 24 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 24 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, aphakia, corneal scarring, glaucoma, prosthesis, retinal detachment, macular scarring, optic atrophy, myopic astigmatism, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but 14 of the applicants

were either born with their vision impairments or have had them since childhood. The 14 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 48 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 24 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 7 to 28 years. In the past 3 years, six of the drivers had convictions for traffic violations and three of the drivers were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 11, 2009 notice (74 FR 65842).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 24 applicants, two of the applicants had a traffic violation for speeding, two of the applicants had a traffic violation for failure to obey a traffic sign, two of the applicants had a traffic violation for driving in the wrong lane, one of the applicants had a traffic violation for unsafe operation of a motor vehicle, and three applicants were involved in a crash. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 24 applicants listed in the notice of December 11, 2009 (74 FR 65842).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 24

individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 24 exemption applications, FMCSA exempts, Dennis J. Ameling, Cris D. Bush, Cary Carn, Billy C. Chenault, Matthew J. Cruver, Harvey H. Curtis, Sr., David E. Evans, Wayne W. Ferguson, Randy M. Garcia, Miguel Godinez, Henry J. Gregoire, Jr., Jason L. Hoovan, Tom A. McCarty, Carlos C. Mendez-Castellon, Glenn A. Miller, Raymond R. Miller, Russell L. Moyers, William E. Norris, Donald D. Overton, Willie L. Parks, Derrick A. Robinson, Clarence Robinshaw, Jr., Norman J. Watson and Jeffrey T. Zuniga from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4255 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0011]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 19 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before *April 1, 2010.*

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0011 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 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.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 19 individuals listed in this notice have each requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Dwight A. Bennett

Mr. Bennett, age 33, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "Patient has sufficient vision to operate a commercial vehicle according to data shown today." Mr. Bennett reported that he has driven straight

trucks for 12 years, accumulating 480,000 miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Arthur W. Boatright, Jr.

Mr. Boatright, 49, has had aphakia, amblyopia and corneal scarring in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, count-finger vision. Following an examination in 2009, his optometrist noted, "In my medical opinion and from his driving history, I believe his condition is stable at this time and he can safely operate a commercial vehicle." Mr. Boatright reported that he has driven tractor-trailer combinations for 17 years, accumulating 884,000 miles. He holds a Class A operator's license from North Carolina. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Larry D. Buchanan

Mr. Buchanan, 56, has a prosthetic left eye due to a traumatic injury sustained in 1961. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, "It is my professional opinion that Larry can and does operate machinery, as well as a motor vehicle." Mr. Buchanan reported that he has driven straight trucks for 18 years, accumulating 450,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Chad L. Burnham

Mr. Burnham, 38, has a prosthetic right eye due to a traumatic injury sustained at age 12. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, "In my medical opinion Chad Burnham has sufficient vision to operate a commercial vehicle." Mr. Burnham reported that he has driven straight trucks for 21 years, accumulating 630,000 miles and tractor-trailer combinations for 8 years, accumulating 200,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chadwick S. Chambers

Mr. Chambers, 34, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "I certify in my medical opinion Mr. Chambers has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Chambers reported that he has driven straight trucks for 4 years, accumulating 20,000 miles and tractor-trailer combinations for 4 years, accumulating 12,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Loren D. Chapman

Mr. Chapman, 50, has had retinal detachment in his left eye since 2005. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2009, his optometrist noted, "It continues to be my personal opinion that Mr. Loren Chapman can perform all the visual tasks and demands placed on him to safely operate a commercial vehicle." Mr. Chapman reported that he has driven tractor-trailer combinations for 23 years, accumulating 1.8 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David A. Christenson

Mr. Christenson, 71, has a prosthetic left eye due to a congenital tumor. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2009, his optometrist noted, "The patient has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Christenson reported that he has driven tractor-trailer combinations for 10 years, accumulating 1 million miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles R. Everett

Mr. Everett, 45, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, "I am confident his vision is sufficient to operate a commercial vehicle." Mr. Everett reported that he has driven straight trucks for 10 years, accumulating 130,000 miles. He holds a Class D operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Julian R. Hall

Mr. Hall, 66, has corneal scarring in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is light-perception only and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "In my opinion, due to Mr. Hall's visual stability, clean driving record, and visual fields, he is very capable to operate a commercial vehicle." Mr. Hall reported that he has driven buses for 33 years, accumulating 990,000 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Claude R. Havener

Mr. Havener, 49, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, "As long as he obeys the traffic law and drives carefully, there is sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Havener reported that he has driven straight trucks for 5 years, accumulating 93,600 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul K. Leger

Mr. Leger, 46, has had retinal detachment in his left eye since 1996. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision. Following an examination in 2009, his ophthalmologist noted, "Mr. Leger qualifies to have sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Leger reported that he has driven straight trucks for 9 years, accumulating 360,000 miles. He holds a Class B CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Postell

Mr. Postell, 46, has a prosthetic left eye due to a traumatic injury sustained during childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, "I certify that in my medical opinion, Mr. Postell has sufficient vision to perform the driving

tasks required to operate a commercial vehicle." Mr. Postell reported that he has driven straight trucks for 22 years, accumulating 704,000 miles and tractor-trailer combinations for 21 years, accumulating 735,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to stay in the proper lane.

Martin L. Reyes

Mr. Reyes, 45, has retinal scarring in his left eye. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his ophthalmologist noted, "In my professional opinion he has adapted well to his vision deficit and I feel professionally that he should be able to perform all his duties as an electrician, including working at heights and driving a commercial vehicle without any problems." Mr. Reyes reported that he has driven straight trucks for 17 years, accumulating 297,500 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald L. Rush, Jr.

Mr. Rush, 50, has a prosthetic left eye due to a traumatic injury sustained in 1989. The best corrected visual acuity in his right eye is 20/30. Following an examination in 2009, his optometrist noted, "In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rush reported that he has driven straight trucks for 29 years, accumulating 1.2 million miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wayne J. Savage

Mr. Savage, 46, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, "In my opinion, Mr. Savage certainly has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Savage reported that he has driven straight trucks for 20 years, accumulating 800,000 miles. He holds a Class B CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary F. Segur

Mr. Segur, 53, has a prosthetic right eye due to a traumatic injury sustained in 2004. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, "I believe that Mr. Segur has suitable vision to drive a commercial vehicle." Mr. Segur reported that he has driven straight trucks for 37 years, accumulating 925,000 miles, tractor-trailer combinations for 35 years, accumulating 1.7 million miles, and buses for 3 years, accumulating 42,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Alan T. Watterson

Mr. Watterson, 58, has a prosthetic right eye due to a traumatic injury sustained 30 years ago. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Watterson reported that he has driven straight trucks for 33 years, accumulating 990,000 miles and tractor-trailer combinations for 33 years, accumulating 660,000 miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David E. Williford

Mr. Williford, 61, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2009, his optometrist noted, "In my medical opinion, Mr. Williford has sufficient visual acuity, color vision and peripheral vision to perform the driving tasks required to operate a commercial vehicle." Mr. Williford reported that he has driven straight trucks for 4 years, accumulating 320,000 miles and tractor-trailer combinations for 1 year, accumulating 80,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry W. Winkler

Mr. Winkler, 59, has a prosthetic left eye due to a traumatic injury sustained in 1997. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, "In my medical opinion, Larry Winkler is stable with no anticipated changes. He has sufficient vision to operate a commercial vehicle." Mr. Winkler reported that he has driven straight trucks for 26½ years, accumulating 715,500 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 1, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 22, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4257 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0321]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 33 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective March 2, 2010. The exemptions expire on March 2, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov*.

Background

On January 13, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 1835). That notice listed 33 applicants' case histories. The 33 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 33 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 33 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, aphakia, corneal scarring, glaucoma, prosthesis, retinal detachment, macular scarring, cataract, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but 12 of the applicants were either born with their vision impairments or have had them since childhood. The 12 individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 42 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 53 years. In the past 3 years, five of the drivers had convictions for traffic violations.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 13, 2010 notice (75 FR 1835).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the

waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants, five of the applicants had a traffic violation for speeding. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 33 applicants listed in the notice of January 13, 2010 (75 FR 1835).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received ten comments in this proceeding. The comments were considered and discussed below.

Six of the comments received were all in favor of granting the Federal vision exemption to Daniel Cannon. Four of the comments received were all in favor of granting the Federal vision exemption to Andrew Fornsel.

Conclusion

Based upon its evaluation of the 33 exemption applications, FMCSA exempts, Bradley T. Alspach, William M. Arbogast, John E. Cain, Terry A. Crites, Daniel M. Cannon, Eugene Contreras, Curtis J. Crowston, Jim L. Davis, Clifford W. Doran, Jr., Daniel W. Doshier, Charles L. Dunn, Andrew G. Fornsel, Jamie L. French, Archie C. Hillsman, Amos W. Hulsey, Guy A. Lanham, Glenn Lewis, James M. McCormick, Shane W. Mincey, Millard F. Neace, II, Frank L. Ortolani, Paul D. Prillaman, Scott A. Randol, Samuel E. Rees, Danny L. Rolfe, Miguel A. Sanchez, Dennis R. Schneider, Michael D. Stevens, Thomas G. Tomasiewicz, James E. Vickery, Billy R. Wilkey, James H. Williams, Jr. and Reginald J. Wuethrich from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4256 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23099]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 6

individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 15, 2010. Comments must be received on or before *April 1, 2010.*

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2005–23099, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 6 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 6 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John R. Alger, Gene Bartlett, Jr., Marland L. Brassfield, Billy R. Jeffries, Gary N. Wilson, William B. Wilson.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 6 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 4194; 71 FR 13450; 73 FR 9158). Each of these 6 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 1, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 6 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each

of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4254 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2005–21711; FMCSA–2005–22727; FMCSA–2007–27897]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on February 10, 2010 (75 FR 1451).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for Donald J. Bierwirth, Jr., Ronald D. Boeve, Arthur L. Bousema, Matthew W. Daggs, Donald R. Date, Jr., John E. Kimmet, Jr., Robert C. Leathers, Jason L. Light, Robert Mollicone, Kenneth R. Murphy, Robert A. Sherry, Stephen G. Sniffin, and John R. Snyder.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4251 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–29019]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 6 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on February 10, 2010 (75 FR 1450).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers

that indicates that safety is being compromised. Based upon its evaluation of the 6 renewal applications, FMCSA renews the Federal vision exemptions for James S. Ayers, Vernon J. Dohrn, Mark A. Massengill, Douglas J. Mauton, Dennis L. Maxcy, and Dean B. Ponte.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA.

The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4250 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Regulatory Guidance Concerning the Applicability of Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces regulatory guidance concerning the applicability of fees in 49 CFR 367.20 to registration under the Unified Carrier Registration (UCR) Plan and Agreement beginning after December 31, 2009. Until an adjustment in the fees is published by FMCSA, States participating in the UCR Plan and Agreement may assess and collect fees under the current FMCSA regulation. In accordance with a statutory amendment that applies to the current regulation, fees must be based on the number of self-propelled commercial motor vehicles owned and operated.

DATES: *Effective Date:* This regulatory guidance is effective on March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Frederic L. Wood, Regulatory Affairs Division, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. E-mail: *frederic.wood@dot.gov.* Telephone: (202) 366–0834.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has the responsibility for setting the initial fees, as well as any adjustments in those fees, to be paid by motor carrier entities required to register with the UCR Plan and Agreement (49 U.S.C. 14504a(d)(7)(B)). The Secretary is also authorized by section 4308 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub L. 109–59, 119 Stat. 1144, 1774 (Aug. 10, 2005) (SAFETEA–LU) (set out as a note to 49 U.S.C. 13902), to "issue such regulations as the Secretary determines are necessary to carry out [the Unified Carrier Registration Act of 2005, title IV, subtitle C, of SAFETEA–LU]." The FMCSA Administrator has been delegated authority by 49 CFR 1.73(a)(5) and (7) to carry out the functions and exercise the authority vested in the Secretary of Transportation by 49 U.S.C. chapters 139 and 145.

Background

This document provides regulatory guidance concerning the applicability of 49 CFR 367.20, *Fees under the Unified Carrier Registration Plan and Agreement for each registration year,* for registration years beginning after December 31, 2009. FMCSA added this section to part 367 of title 49, Code of Federal Regulations (CFR) in a final rule in 2007 in order to set the initial fees for the Unified Carrier Registration Plan (UCR Plan). 72 FR 48590 (Aug. 24, 2007).

The UCR Plan is generally governed by the provisions of 49 U.S.C. 14504a, as added by section 4305 of SAFETEA–LU, 119 Stat. 1764–1773. The UCR Plan is the organization responsible for implementing and administering the Unified Carrier Registration Agreement (UCR Agreement), an interstate agreement governing the collection and distribution of registration information and fees collected pursuant to the statute. 49 U.S.C. 14504a(a)(8) and (9). Section 14504a(f)(1)(A)(i) requires that motor carriers, motor private carriers, and freight forwarders operating motor vehicles be charged registration fees that are "based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder * * *." At the time of the issuance of the 2007 final rule, section 14504a(a)(1)(A) provided that, in general, a commercial motor vehicle "has the meaning such term has under [49 U.S.C.] 31101." In that section, a commercial motor vehicle is defined as "a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo * * *." Taken together, these provisions required entities subject to registration and payment of fees to the UCR Plan to determine both the number of self-propelled vehicles (i.e., powered units, such as tractors and straight trucks) and the number of towed vehicles (i.e., trailers) in their fleets in order to assess the applicable fee to be paid under 49 CFR 367.20.

In § 367.20, FMCSA published a table that established the fee schedule for motor carrier entities that are subject to registration and payment of fees under the UCR Plan. The headings of both § 367.20 and the table it contains read "Fees under the Unified Carrier Registration Plan and Agreement for each registration year." Accordingly, the fee schedule is not limited to a specific year, but can be used in any registration year. The fee schedule is based on brackets established by the "number of commercial motor vehicles owned or operated by an exempt or non-exempt motor carrier, motor private carrier, or freight forwarder." This is essentially identical to the statutory phrase in section 14504a(f)(1)(A)(i). Section 367.20 does not contain a separate definition of the term "commercial motor vehicles." Therefore, it is reasonable to conclude that the term's meaning is controlled by the statutory definition found in section 14504a(f)(1)(A)(i). The provisions of § 367.20 have been applied by the States participating in the UCR Plan and Agreement on that basis to assess and collect fees for three registration years: 2007, 2008 and 2009. See 73 FR 10157–58 (Feb. 26, 2008).

In 2008, in section 701(d)(1)(B) of the Rail Safety Improvement Act of 2008, Public Law 110–432, div. A, title IV, 122 Stat. 4848, 4906 (Oct. 16, 2008), Congress amended section 14504a(a)(1)(A) so that it now provides:

> [T]he term "commercial motor vehicle"—
> (i) for calendar years 2008 and 2009, has the meaning given the term in section 31101 [of title 49, U.S.C.].; and
> (ii) for years beginning after December 31, 2009, means a self-propelled vehicle described in section 31101.

This amendment means that for UCR registration years beginning with 2010, the number of "commercial motor vehicles" used to determine the size of a motor carrier's fleet will be based only on the number of self-propelled (or powered) vehicles and will not include towed vehicles.

Because the meaning of the term "commercial motor vehicles" in § 367.20

is controlled by the meaning of that term in section 14504a(a)(1)(A), the change in meaning made by the statutory amendment also applies to the term used in § 367.20. This is a necessary result of this basic principle: "First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984). Congress has clearly expressed its intent to change the meaning of the term "commercial motor vehicles" as used in section 14504a for years beginning after December 31, 2009. The relevant FMCSA regulation implementing the statutory provisions must be interpreted accordingly.

Purpose and Effect of This Interpretation

FMCSA has received a recommendation by the UCR Plan regarding an adjustment in fees for 2010 in accordance with 49 U.S.C. 14504a(d)(7)(A). Although FMCSA published a notice of proposed rulemaking regarding a recommended adjustment in the fees on September 3, 2009 (74 FR 45583), a final rule has not yet been issued due to unexpected delays. States may, of course, await the publication of the final rule before assessing and collecting UCR Plan fees for 2010. However, the interpretation of § 367.20 set forth in this regulatory guidance—namely, the fact that the fee schedule in § 367.20 is not limited, but can be used in any registration year—allows the States participating in the UCR Plan to consider the option of assessing and collecting fees for registration year 2010 by applying that existing fee structure. In doing so, States would have to base fees on the number of self-propelled vehicles (not including towed vehicles) that are owned or operated by exempt or non-exempt motor carriers, motor private carriers, or freight forwarders.

This option allows those States to continue meeting their commitment, in accordance with section 14504a(e)(1)(B), "that an amount at least equal to the revenue derived by the State from the unified carrier registration agreement shall be used for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement." In addition, the participating States will also have funds available to meet their share of the costs of participating in the Motor Carrier Safety Assistance Program's grants, as permitted by 49 U.S.C. 31103(a), as amended by section 4307 of SAFETEA–LU, 119 Stat. 1774. To be sure, because the fees set in § 367.20 were based on the previous definition of commercial motor vehicles that included trailers, many motor carriers would pay fees based on a smaller number of commercial motor vehicles, thus producing less revenues for the participating States. Nonetheless, registration and payment of fees for 2010 under § 367.20 would allow participating States an opportunity to receive at least a partial flow of revenues in order to meet the statutory objectives.

The final rule establishing the adjusted fees beginning with registration year 2010 is presently under consideration by the Agency and the Department and will most likely be reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget. Once a final determination is made concerning a final rule, participating States that decided to assess and collect fees under the current fee schedule may then assess and collect the balance due from any motor carrier entities that registered and paid the fees established in the current fee schedule.

Regulatory Guidance

Part 367—Standards for Registration With States

Sections Interpreted

Section 367.20 Fees Under the Unified Carrier Registration Plan and Agreement for Each Registration Year.

Question: Do the fees set by this section apply to registration years beginning after December 31, 2009?

Guidance: Yes. The States participating in the Unified Carrier Registration Plan and Agreement may assess and collect fees pursuant to the fee schedule set forth in 49 CFR 367.20. The statutory amendment of the applicable definition of commercial motor vehicles in 49 U.S.C. 14504a that applies beginning after December 31, 2009, also governs the application of the fees established by this section.

Issued on: February 22, 2010.

Rose A. McMurray,

Associate Administrator and Chief Safety Officer.

[FR Doc. 2010–4294 Filed 3–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Basel Comprehensive Quantitative Impact Study

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before May 3, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an 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.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Roberta M. Renz (202) 906–6447, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the

approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Basel Comprehensive Quantitative Impact Study.

OMB Number: 1550–0NEW.

Form Numbers: N/A.

Regulation requirement: 12 CFR Part 567.

Description: The International Convergence of Capital Measurement and Capital Standards: A Revised Framework, also known as the Basel II Capital Accord, sets out a general international capital framework for financial institutions. The Basel II Capital Accord was adopted under the auspices of the Basel Committee on Banking Supervision [1] (Basel Committee), and was implemented into domestic regulations in the United States by the Federal financial agencies on December 7, 2007 (72 FR 69288). In an effort to refine the Basel II Capital Accord, the Basel Committee will conduct a quantitative impact study (QIS) to assess the impact of the proposed revisions that were published by the Basel Committee on December 17, 2009.[2] As part of this effort, the OTS, in coordination with the other Federal financial agencies, is proposing to collect data from national financial institutions with respect to the following subjects:

■ Revisions to the Basel II market risk framework [3] and guidelines for computing capital for incremental risk in the trading book,[4] including the incremental risk capital charge; the comprehensive risk measure for correlation trading portfolios; the new rules for securitization exposures in the trading book; and the revised capital charges for certain equity exposures subject to the standardized measurement method for market risk.

■ Enhancements to the Basel II framework [5] including the revised risk weights for re-securitizations held in the banking book.

■ Enhancements to strengthen the resilience of the financial institution sector [6] including the proposed changes to the definition of capital; the proposed introduction of a leverage ratio; and the proposed changes to the treatment of counterparty credit risk.

■ Liquidity enhancements referring to the international framework for liquidity risk measurement, standards and monitoring.[7]

■ Operational risk and countercyclical tools.

The OTS intends to collect data for the QIS from financial institutions subject to the Basel II Capital Framework [8] and those subject to the current risk-based capital guidelines (Basel I).[9] Unless otherwise noted, all data would be reported on a consolidated basis. Ideally, financial institutions should include all their assets in this information collection. However, due to data limitations, inclusion of some assets (for example, the portfolio of a minor subsidiary) may not be feasible. Exclusion of such assets is acceptable, as long as the remaining assets are representative of the financial institution as a whole.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 5.

Estimated Burden Hours per Response: 117.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 585 hours.

Dated: February 24, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–4203 Filed 3–1–10; 8:45 am]

BILLING CODE 6720–01–P

[1] The Basel Committee on Banking Supervision is a committee of banking supervisory authorities, which was established by the central bank Governors of the Group of Ten countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. It usually meets at the Bank for International Settlements (BIS) in Basel, Switzerland, where its permanent Secretariat is located.

[2] Basel Committee on Banking Supervision, *Strengthening the resilience of the banking sector,* consultative document, December 17, 2009.

[3] Basel Committee on Banking Supervision, *Revisions to the Basel II market risk framework,* July 2009.

[4] Basel Committee on Banking Supervision, *Guidelines for computing capital for incremental risk in the trading book,* July 2009.

[5] Basel Committee on Banking Supervision, *Enhancements to the Basel II framework,* July 2009.

[6] *See* footnote 2.

[7] Basel Committee on Banking and Supervision, *International Framework for liquidity risk measurement, standards and monitoring,* consultative document, December 17, 2009.

[8] *See* 12 CFR Part 3, Appendix C.

[9] See 12 CFR Part 3, Appendix A.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Proposed Information Collection (Brand Name or Equal) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to allow firms to offer items that are equal to the brand name item stated in the bid.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 3, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov*. Please refer to "OMB Control No. 2900–0585" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–77 advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 1,666 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: February 25, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4214 Filed 3–1–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0502)]

Proposed Information Collection (Ethics Consultation Feedback Tool (ECFT)) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to improve the process of ethics consultation service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 3, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: mary.stout@va.gov*. Please refer to "OMB Control No. 2900–New (VA Form 10–0502)" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ethics Consultation Feedback Tool (ECFT), VA Form 10–0502.

OMB Control Number: 2900–New (VA Form 10–0502).

Type of Review: New collection.

Abstract: VA Form 10–0502 will use to collect data from patients and family members about their experience during the Ethics Consultation Service. VA will use the data to improve the process of ethics consultation (*i.e.,* how ethics consultation is being performed) as well as its outcomes *(i.e.,* how ethics consultation affects participants and the facility).

Affected Public: Individuals or households.

Estimated Annual Burden: 100.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: February 25, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4215 Filed 3–1–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Proposed Information Collection (Designation of Beneficiary) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information

needed to determine a claimant's eligibility to receive the proceeds of a veteran's Government Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 3, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0020" in any correspondence. During the comment period, comments may be viewed online through FDMS at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Beneficiary, Government Life Insurance, VA Form 29–336.

OMB Control Number: 2900–0020.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–336 is completed by the insured to designate a beneficiary and select an optional settlement to be used when the Government Life Insurance matures by death.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

Dated: February 25, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4216 Filed 3–1–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Proposed Information Collection (Application for Cash Surrender or Policy Loan) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for a loan or cash surrender value on his or her Government Life Insurance policy.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 3, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0012" in any correspondence. During the comment period, comments may be viewed online through FDMS at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Cash Surrender, Government Life Insurance, VA Form 29–1546

b. Application for Policy Loan, Government Life Insurance, 29–1546–1.

OMB Control Number: 2900–0012.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 29–1546 and 29–1546–1 to request a cash surrender or policy loan on his or her Government Life Insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Dated: February 25, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 2010–4217 Filed 3–1–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
March 2, 2010

Part II

Securities and Exchange Commission

Commission Statement in Support of Convergence and Global Accounting Standards; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9109; 34–61578]

Commission Statement in Support of Convergence and Global Accounting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing this statement to provide an update regarding its consideration of global accounting standards, including its continued support for the convergence of U.S. Generally Accepted Accounting Principles ("U.S. GAAP") and International Financial Reporting Standards ("IFRS") and the implications of convergence with respect to the Commission's ongoing consideration of incorporating IFRS into the financial reporting system for U.S. issuers.

FOR FURTHER INFORMATION CONTACT: Eloise Quarles Bavaria, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, Jeffrey S. Cohan, Senior Special Counsel, Office of the Chief Accountant, at (202) 551–5300, or Nili Shah, Associate Chief Accountant, Office of the Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

The Commission continues to believe that a single set of high-quality globally accepted accounting standards will benefit U.S. investors and that this goal is consistent with our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. As a step toward this goal, we continue to encourage the convergence of U.S. GAAP and IFRS and expect that the differences will become fewer and narrower, over time, as a result of the convergence project.

The Commission last addressed this topic in November 2008 when it issued a proposed "Roadmap" for a possible path to a single set of globally accepted accounting standards.[1] The Proposed Roadmap generated significant interest and thoughtful comment from investors, issuers, accounting firms, regulators, and others regarding factors that the Commission should consider as it moves forward in its evaluation of whether and how to incorporate IFRS into the financial reporting system for U.S. issuers. In addition to reaffirming the Commission's strong commitment to a single set of global standards, the recognition that IFRS is best-positioned to be able to serve the role as that set of standards for the U.S. market, and the convergence process ongoing between the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board ("IASB"), this statement outlines certain of these factors that are of particular importance to the Commission as it continues to evaluate IFRS through 2011.

The Commission has directed its staff to develop and execute a work plan (the "Work Plan") to enhance both understanding of the Commission's purpose and public transparency in this area.[2] Execution of the Work Plan, combined with the completion of the convergence projects of the FASB and the IASB according to their current work plan, will position the Commission in 2011 to make a determination regarding incorporating IFRS into the financial reporting system for U.S. issuers.

I. Overview

A. History of the Commission's Steps To Foster a Single Set of High-Quality Globally Accepted Accounting Standards

The Commission has long promoted a single set of high-quality globally accepted accounting standards.[3] This position advances the dual goals of improving financial reporting within the United States and reducing country-by-country disparity in financial reporting. This, in turn, would facilitate cross-border capital formation while also helping to provide investors with the comparable and material information they need to make informed decisions about investment opportunities. In 1988, the Commission issued a policy statement supporting the establishment of mutually acceptable international accounting standards, provided that investor protections were not compromised.[4] The Commission cited the establishment of such standards as a critical goal to reduce regulatory impediments to cross-border capital transactions that result from disparate national accounting standards.[5]

In a 1997 report to Congress, the Commission encouraged the efforts of the International Accounting Standards Committee to develop a core set of accounting standards that could serve as a framework for financial reporting in cross-border offerings. In that report, the Commission also expressed its intent to remain active in the development of those standards.[6] These standards are now known as IFRS, and the International Accounting Standards Committee was succeeded by the IASB.

In 2000, the Commission issued a concept release on international accounting standards, seeking comment on the requisite elements to encourage convergence toward a global financial reporting framework that would not diminish the quality of domestic financial reporting.[7] The 2000 Concept Release discussed generally the circumstances under which the Commission would consider accepting financial statements from foreign private issuers[8] that are prepared using IFRS without a reconciliation to U.S. GAAP.[9]

In the 2000 Concept Release, the Commission set out some fundamental attributes for a high-quality set of accounting standards that continue to be important today. These attributes require that the standards (a) be of sufficiently high quality to support the Commission's mission of protecting investors and facilitating capital formation, and (b) be supported by an

[1] *See Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers,* Release No. 33–8982 (November 14, 2008) [73 FR 70816 (November 21, 2008)] ("Proposed Roadmap").

[2] The Work Plan is included as an appendix to this statement. A summary of the key areas of the Work Plan is provided in section IV of this statement.

[3] *See, e.g., Integrated Disclosure System for Foreign Private Issuers,* Release No. 33–6360 (November 20, 1981) [46 FR 58511 (December 2, 1981)].

[4] *See Regulation of the International Securities Markets,* Release No. 33–6807 (November 14, 1988) [53 FR 46963 (November 21, 1988)].

[5] *Id.*

[6] *See* "Pursuant to Section 509(5) of the National Securities Markets Improvement Act of 1996 Report on Promoting Global Preeminence of American Securities Markets" (October 1997).

[7] *See International Accounting Standards,* No. 33–7801 (February 16, 2000) [65 FR 8896 (February 23, 2000)] ("2000 Concept Release").

[8] The term "foreign private issuer" is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer means any foreign issuer other than a foreign government, except an issuer that meets the following conditions: (1) more than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

[9] In 2007, the Commission adopted rules permitting foreign private issuers to file financial statements using IFRS as issued by the IASB and to omit a reconciliation to U.S. GAAP. *See Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP,* Release No. 33–8879 (December 21, 2007) [73 FR 986 (January 4, 2008)] ("2007 Adopting Release").

infrastructure that ensures that the standards are established by independent standard setters, and are rigorously and consistently interpreted and applied.

After enactment of the Sarbanes-Oxley Act of 2002 (the "Act"), the Commission reaffirmed its recognition of the financial accounting and reporting standards of the FASB as "generally accepted" for purposes of the federal securities laws.[10] One of the criteria that Congress required the Commission to consider, when recognizing an accounting standard setter, was whether that standard setter considers "international convergence on high-quality accounting standards as necessary or appropriate in the public interest and for the protection of investors." [11]

Also as required by Congress in the Act, in 2003, our staff issued a study on the adoption in the United States of a principles-based accounting system.[12] That study stated that global accounting standardization through convergence would lead to the following benefits:

- Greater comparability for investors across firms and industries on a global basis;
- reduced listing costs for companies with multiple listings;
- increased competition among exchanges;
- better global resource allocation and capital formation;
- lowered cost of capital; and
- a higher global economic growth rate.[13]

Beginning in 2002, the FASB and the IASB began a formal process to converge U.S. GAAP and IFRS. In 2002, the FASB and the IASB announced the issuance of a memorandum of understanding to collaborate on the development of common, high-quality standards with the ultimate goal of a single set of high-quality global accounting standards.[14] In 2006, the FASB and the IASB issued an updated memorandum of understanding that set forth the scope of their joint work program to improve and promote convergence of their accounting standards.[15] The 2006 memorandum of understanding was updated in September 2008 to identify targets for completion of convergence projects that the FASB and the IASB believed were most critical.[16] Throughout this process the Commission has monitored, and will continue to monitor, the activities of the FASB and the IASB and the progress in their efforts.

In 2007, the Commission took two additional actions. First, it issued a concept release on whether U.S. issuers should be allowed to prepare financial statements in accordance with IFRS.[17] Second, the Commission adopted rules that allow foreign private issuers to make filings with the Commission using financial statements prepared in accordance with IFRS, as issued by the IASB, and without reconciliation to U.S. GAAP.[18]

Recently, the leaders of the Group of Twenty nations ("G–20") requested that international accounting bodies redouble their efforts to achieve a single set of high-quality, global accounting standards through their independent standard-setting processes and complete their convergence project in June 2011.[19] The FASB and IASB recently reaffirmed their commitment to improving and converging their respective accounting standards, and further committed to intensify their efforts to meet a 2011 timeline.[20] Chairman Mary L. Schapiro also recently noted the Commission's commitment "to the goal of a global set of high-quality accounting standards." [21]

B. The Proposed Roadmap

In November 2008, the Commission proposed a path to evaluating the further role of IFRS in the U.S. capital markets.[22] The Proposed Roadmap sought comment on a number of suggested "milestones" that the Commission might consider.

The Proposed Roadmap contemplated that, subject to an assessment of the milestones and other considerations, and after consideration of public comment, the Commission could be in a position in 2011 to decide whether to require the use of IFRS by U.S. issuers beginning in 2014, potentially allowing earlier use by certain U.S. issuers beginning with filings for fiscal years ending on or after December 15, 2009.[23]

II. Public Feedback on the Commission's Proposed Roadmap

We received over 200 comment letters on the Proposed Roadmap from a wide variety of market participants, including those representing investors, regulators, issuers, accounting, legal, and other professions, academia, standard setters, and international organizations.[24] Commenters generally expressed widespread support for the ultimate goal of having a single set of high-quality globally accepted accounting standards.[25] However, commenters differed in their views about the approach in the Proposed Roadmap to achieve further use of IFRS in the U.S. capital markets. Several commenters asserted that there are many transition questions and issues arising from the proposed approach that the Commission should consider further.[26]

A. Potential for High-Quality Globally Accepted Accounting Standards

There was widespread support across all commenters for a single set of high-

[10] *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* Release No. 33–8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)] ("2003 Policy Statement").

[11] *See* Section 19 of the Securities Act of 1933, as amended (15 U.S.C. 77a).

[12] *See* "Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System" (July 25, 2003) ("2003 Study").

[13] *Id.*

[14] *See* "Memorandum of Understanding, 'The Norwalk Agreement,'" (September 18, 2002). (available at: *http://www.fasb.org/news/memorandum.pdf*)

[15] *See* "Memorandum of Understanding between the FASB and the IASB" (February 27, 2006). (available at: *http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176156245558*)

[16] *See* "Completing the February 2006 Memorandum of Understanding: A progress report and timetable for completion" (September 2008). (available at: *http://www.fasb.org/intl/MOU_09-11-08.pdf*)

[17] *See Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards,* Release No. 33–8831 (August 7, 2007) [72 FR 45600 (August 14, 2007)] ("2007 Concept Release").

[18] *See* 2007 Adopting Release.

[19] *See* "Leaders' Statement from the Pittsburgh Summit" (September 24–25, 2009). (available at: *https://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf*)

[20] *See* "FASB and IASB Reaffirm Commitment to Memorandum of Understanding: A Joint Statement of the FASB and IASB" (November 5, 2009). (available at: *http://www.iasb.org/NR/rdonlyres/D56F53A2-1FFE-425B-824B-9092E8A2D545/0/JointCommunique_October2009FINAL4.pdf*)

[21] *See* Speech by SEC Chairman Mary L. Schapiro: *Remarks at IOSCO Technical Committee Conference* (October 8, 2009).

[22] *See* Proposed Roadmap. Unless otherwise noted, the phrase "IFRS" refers to "IFRS as issued by the IASB."

[23] The Proposed Roadmap did not address the method the Commission might use to mandate IFRS for U.S. issuers. *See Id.*

[24] Comment letters in response to the Proposed Roadmap are available on the Commission's Web site (at *http://www.sec.gov/comments/s7-27-08/s72708.shtml*). Comments are also available for Web site viewing and printing 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.

[25] *See, e.g.,* Abbott Inc. ("Abbott"), Air Products and Chemicals, Inc., California Public Employees' Retirement System ("CalPERS"), CFA Institute ("CFA"), Council of Institutional Investors ("CII"), International Corporate Governance Network ("ICGN"), Institute of International Finance, Investors Technical Advisory Committee ("ITAC"), RiskMetrics Group, Inc. ("RiskMetrics"), and Standard & Poor's Ratings Services ("S&P").

[26] *See, e.g.,* AT&T Services, Inc., The Boeing Company ("Boeing"), and Chevron Corporation.

quality globally accepted accounting standards.[27] While commenters offered differing perspectives, some commenters identified the following potential benefits from a single set of global accounting standards:

- Improved financial statement comparability among companies worldwide;
- streamlined accounting processes for multinational companies; and
- easier access to foreign capital and improved liquidity, leading to a reduced cost of capital.[28]

The potential benefits identified by commenters generally are consistent with the perceived benefits discussed in the staff's 2003 Study. Improved comparability was the most frequently cited potential benefit from the use of a single set of global accounting standards.[29] However, some commenters, while expressing support for the concept of a single set of global accounting standards, expressed reservations regarding whether the adoption of global accounting standards is a feasible objective.[30] Some of these concerns are discussed below.

B. The Proposed Roadmap

Opinions regarding the approach outlined in the Proposed Roadmap diverged. The key areas of concern expressed by the commenters include the readiness of IFRS to serve as the set of accounting standards for U.S. issuers, the need for continued convergence of IFRS and U.S. GAAP, and the timeframe set for, and potential costs of, transitioning U.S. GAAP to IFRS.[31]

Opinions regarding the potential of IFRS, in its current state, to serve as the single set of global accounting standards varied broadly across and within categories of commenters. While larger, multinational firms and commenters from the accounting profession generally saw IFRS as best positioned for the role of the single set of global accounting standards,[32] a number of other commenters expressed concerns regarding the capability of these standards, in their current state, to serve that role.[33]

Many investors and investor groups that addressed this issue expressed the view that it was too early to judge the potential of IFRS to serve as the single set of global accounting standards.[34] Commenters who expressed this view noted that:

- IFRS is not sufficiently developed or applied in practice to be adopted as a single set of global standards (*e.g.,* either IFRS lacks guidance in certain significant areas, or the guidance it does contain appears to or may allow too much latitude to achieve more comparable financial reporting than U.S. GAAP);
- jurisdictional variants in the application of IFRS pose a significant challenge to the adoption of IFRS as a truly global reporting model; and
- the achievement of a genuine common global financial reporting model would require consistent application, auditing, and enforcement across countries.[35]

In addition, some commenters expressed concern that a "business case" has not been sufficiently demonstrated to support moving from existing U.S. GAAP directly to IFRS. These commenters contend that existing U.S. GAAP is already widely accepted worldwide and is seen as high-quality, and that not all U.S. companies compete for capital globally or issue securities outside the U.S. market, so the primary effect of the Proposed Roadmap would be increased costs in return for minimal and largely conceptual benefits.[36] Others noted that significant challenges likely would arise in having an international organization as the ultimate body that would set standards for U.S. issuers.[37] Commenters in this area questioned whether this would be a wise policy, given the Commission's long-standing statutory role of setting and overseeing financial reporting standards for the United States.[38]

In contrast to the varying perspectives on the potential use of IFRS to serve as the common set of global accounting standards, commenters were more consistent with respect to their concerns on the approach and schedule outlined in the Proposed Roadmap. Many commenters, particularly investors, believed that the Commission should articulate how it intended to mandate the use of IFRS in the United States before they would be willing to support such a move.[39] Also, many commenters believed the proposal either underestimated or did not adequately address the many critical issues and costs (both quantitative and qualitative) that would be involved in meeting the transition timing suggested in the Proposed Roadmap. For example, while many commenters believed the proposal identified in concept many of the factors to be considered in choosing a particular path forward for the U.S. capital markets, they also believed that it did not sufficiently articulate a plan for identifying and addressing the specific issues and the criteria against which they would be judged.[40] As a result, several commenters recommended that the Commission further develop a plan to determine the appropriate path forward, including the affirmative actions and specific steps that need to be taken.[41]

III. Approach Forward for the U.S. Capital Markets

We continue to support the objective of financial reporting in the global markets pursuant to a single set of high-quality globally accepted accounting standards. As evidenced by the recent economic crisis, the activities and interests of investors, companies, and markets are increasingly global. This continued globalization of our markets reinforces the idea that the pursuit of this goal is consistent with our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

Since the second half of 2007, the world economy has experienced economic conditions not seen since the Great Depression. What at one time was viewed by some as an isolated crisis in the subprime mortgage sector spread to

[27] *See, e.g.,* Accretive Solutions, Alcoa Inc. ("Alcoa"), CalPERS, Center for Audit Quality, Cleary Gottlieb Steen & Hamilton LLP, General Mills, Inc., Institute of Management Accountants, State of New York Banking Department, PricewaterhouseCoopers LLP ("PwC"), and RiskMetrics,

[28] *See, e.g.,* Liberty Global and Graybar Electric Company, Inc. ("Graybar") comment letters for lists of potential benefits from the use of a single set of global standards.

[29] *See, e.g.,* American Institute of Certified Public Accountants ("AICPA"), Federation of European Accountants ("FEE"), and Institute of Chartered Accountants of Scotland.

[30] *See, e.g.,* Liberty Global, The Lubrizol Corporation ("Lubrizol"), National Association of State Boards of Accountancy ("NASBA"), and Reznick Group, P.C.

[31] *See, e.g.,* Boeing, FPL Group, Inc., and Kohl's Corporation.

[32] *See, e.g.,* AICPA, Alcoa, Association of Chartered Certified Accountants, California Society of Certified Public Accountants, Center for Audit Quality, IBM Corporation, and The Ohio Society of CPAs.

[33] *See, e.g.,* Aerospace Industries Association and Committee of Annuity Insurers ("CAI").

[34] *See, e.g.,* CalPERS, CII, ICGN, ITAC, and S&P.

[35] *See, e.g.,* American Insurance Association, CAI, Center for Capital Markets Competitiveness, Dominion Resources Services, Hot Topic Inc., McDonald's Corporation ("McDonald's"), and National Association of Real Estate Investment Trusts.

[36] *See, e.g.,* Darden Restaurant, Inc. ("Darden"), McDonald's, and PPL Corporation ("PPL").

[37] *See, e.g.,* CMS Energy Corporation and Consumers Energy Company, Darden, Lubrizol, and McDonald's.

[38] *See, e.g.,* Darden, Intel Corporation ("Intel"), and MetLife, Inc.

[39] *See, e.g.,* CalPERS and S&P.

[40] *See, e.g.,* CFA, CII, JPMorgan Chase, and The New York State Society of Certified Public Accountants.

[41] *See, e.g.,* CalPERS, ICGN, Intel, ITAC, Northrop Grumman Corporation ("Northrop Grumman"), and S&P.

the global economy as a whole. The current environment has highlighted certain of the existing differences in the accounting standards used in the major capital markets. Some believe that these differences in accounting standards contributed to difficulty in the ability of investors and other stakeholders to assess the financial results of companies operating and competing in the global markets in determining how to allocate capital.[42] As part of the G–20's efforts to address the economic crisis, it specifically requested that accounting bodies redouble their efforts to achieve a single set of high-quality, global accounting standards through their independent standard-setting processes and complete their convergence project by 2011.[43]

The Commission's statutory mandate with respect to determining the accounting standards to be used in the United States requires it to promote full, fair, and reliable disclosure for the protection of U.S. investors.[44] The U.S. capital markets are among the largest and most liquid in the world. We believe that the acceptance, comprehensiveness, reliability, and enforceability of U.S. GAAP are important reasons for the pre-eminence of our capital markets. U.S. GAAP is a well-established basis for financial reporting that is applied by all U.S. issuers, many foreign companies and many U.S. private companies. Preparers and users of financial statements, such as investors and analysts, are familiar with U.S. GAAP. Thus, we acknowledge the magnitude of the task that would be involved to incorporate IFRS into our financial reporting environment for U.S. issuers. It is therefore important that, before we mandate any such change, careful consideration and deliberation, as well as a sufficient transition time for users and preparers of financial statements, occur to assure that such a change is in the best interest of U.S. investors and markets.

We have considered carefully the input contained in the comment letters we received. We believe that a more comprehensive work plan is necessary to lay out transparently the work that must be done to support our decision on the appropriate course to incorporate IFRS into the U.S. financial reporting system for U.S. issuers, including the scope, timeframe, and methodology for any such transition. Toward this end, we have directed the staff of the Office of the Chief Accountant, with appropriate consultation with other Divisions and Offices of the Commission, to develop and carry out the Work Plan. The Work Plan accompanies this statement as an appendix.

The Work Plan sets forth specific areas and factors for the staff to consider before potentially transitioning our current financial reporting system for U.S. issuers to a system incorporating IFRS. Specifically, the Work Plan addresses areas of concern that were highlighted by commenters, including:

- Sufficient development and application of IFRS for the U.S. domestic reporting system;
- The independence of standard setting for the benefit of investors;
- Investor understanding and education regarding IFRS;
- Examination of the U.S. regulatory environment that would be affected by a change in accounting standards;
- The impact on issuers, both large and small, including changes to accounting systems, changes to contractual arrangements, corporate governance considerations, and litigation contingencies; and
- Human capital readiness.

The staff will provide public progress reports on the Work Plan beginning no later than October 2010 and frequently thereafter until the work is complete. The Work Plan is designed to provide the Commission the information it needs to evaluate the implications of incorporating IFRS into the U.S. domestic reporting system. Following successful completion of the Work Plan and the FASB–IASB convergence projects according to their current work plan, the Commission will be in a position in 2011 to determine whether to incorporate IFRS into the U.S. domestic reporting system.

Commenters on the Proposed Roadmap expressed a view that U.S. issuers would need approximately four to five years to successfully implement a change in their financial reporting systems to incorporate IFRS.[45] Therefore, assuming that the Commission determines in 2011 to incorporate IFRS into the U.S. domestic reporting system, we believe that the first time U.S. issuers would report under such a system would be approximately 2015 or 2016. We have asked the staff as part of the Work Plan to further evaluate this timeline.

IV. Summary of the Key Areas of the Work Plan

The Commission staff will analyze each of the six areas identified in its Work Plan, as discussed further below. The first two areas consider characteristics of IFRS and its standard setting that would be the most relevant to a future determination by the Commission regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. The remaining four areas relate to transitional considerations that will enable the Staff to better evaluate the scope of, timing of, and approach to changes that would be necessary to effectively incorporate IFRS into the financial reporting system for U.S. issuers, should the Commission determine in the future to do so.

While an ultimate determination of any specific methods (*e.g.,* convergence, standard-by-standard adoption, wholesale adoption) or dates for the possible incorporation of IFRS into the financial reporting system for U.S. issuers is beyond the scope of the Work Plan, the information obtained through the Work Plan will facilitate future Commission consideration of those matters. The Work Plan provides additional detail about the analysis that the staff will perform in each of these six areas.

A. Sufficient Development and Application of IFRS for the U.S. Domestic Reporting System

As described in the 2000 Concept Release, the Commission's efforts to support a globally accepted high-quality financial reporting framework have been guided by its mission of protecting investors, maintaining fair, orderly, and efficient capital markets, and facilitating capital formation.[46] A necessary element for a set of global accounting standards to meet these objectives is that they must be high quality, consisting of a "comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions."[47] The Commission continues to believe that high-quality global accounting standards "must be supported by an infrastructure that ensures that the standards are rigorously

[42] *See* "Report of the Financial Crisis Advisory Group" (July 28, 2009). (available at: *http://www.iasb.org/NR/rdonlyres/2D2862CC-BEFC-4A1E-8DDC-F159B78C2AA6/0/FCAGReportJuly2009.pdf*)

[43] *See* "Leaders' Statement from the Pittsburgh Summit" (September 24–25, 2009). (available at: *http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf*)

[44] *See* 2003 Policy Statement.

[45] *See, e.g.,* Boeing, Northrop Grumman, PepsiCo, Inc., and tw telecom inc.

[46] *See* 2000 Concept Release.

[47] *See* 2000 Concept Release, at II.A.

interpreted and applied"[48] both within and outside the United States.

The increasing acceptance and use of IFRS in major capital markets throughout the world over the past several years, and its anticipated use in other countries in the near future, demonstrate that IFRS has the greatest potential to provide a common platform for capital markets regulators. The IASB has made significant progress in developing high-quality accounting standards, as noted in the 2007 Adopting Release.[49] However, as the Commission noted in the Proposed Roadmap, there are areas where completion of the IASB's standard-setting initiatives, including those included in its convergence agenda with the FASB, should improve and further develop IFRS.[50] The successful completion of these efforts would be a significant accomplishment toward improving financial reporting for investors worldwide. In addition, the Commission in the Proposed Roadmap stated that, in further considering IFRS, it would "consider whether those accounting standards are of high quality and sufficiently comprehensive."[51] As part of the staff's efforts under the Work Plan, the staff will evaluate the IASB's efforts to improve IFRS, including through those joint IASB–FASB projects scheduled to be completed in 2011.

1. Comprehensiveness

In the Proposed Roadmap, the Commission stated that "IFRS is not as developed as U.S. GAAP in certain areas."[52] For example, IFRS does not provide broad guidance for certain topical areas, such as accounting for certain common control transactions, recapitalization transactions, reorganizations, and acquisitions of minority shares not resulting in a change of control and similar transactions.[53] IFRS also lacks guidance for certain broad industries, including those the IASB is currently developing related to utilities, insurance, extractive activities, and investment companies.[54] As part of the Work Plan, the staff will assess the overall level of comprehensiveness of IFRS.

2. Auditability and Enforceability

The Proposed Roadmap noted the challenges that can exist with IFRS's less prescriptive guidance. Commenters on the Proposed Roadmap raised several concerns regarding the auditability and enforceability of IFRS, including the risk of opportunistic accounting; diminished comparability; and the potential for accounting conclusions of preparers to be unfairly criticized by auditors, regulators, and investors.

The auditability and enforceability of a set of accounting standards are essential aspects of investor protection. Under the Work Plan, the staff will analyze factors that may influence the auditability and enforceability of financial statements prepared under IFRS.

3. Consistent and High-Quality Application

The Commission has based its continued strong support for a single set of high-quality globally accepted accounting standards, including the consideration of incorporating IFRS into its financial reporting system, on the premise that U.S. investors ultimately will benefit from the comparability of financial information from issuers on a worldwide basis. Consistent and high-quality implementation is necessary for investors to benefit from a set of high-quality global accounting standards.[55] To assess the consistent and faithful application of IFRS, the staff will analyze the factors that may influence the degree of comparability of financial statements prepared under IFRS on a global basis and their consequences in practice. The staff also will assess the relative effect on comparability of financial reporting in the United States, if IFRS were incorporated into the financial reporting system for U.S. issuers.

B. The Independence of Standard Setting for the Benefit of Investors

Another important element for a set of high-quality global accounting standards is whether the accounting standard setter's funding and governance structure support the independent development of accounting standards for the ultimate benefit of investors. This is an area of significant concern to the investors and investor groups that commented on the Proposed Roadmap.[56] The Work Plan includes an ongoing review of the functioning of the IASB's governance structure and developments to secure a stable, broad-based source of funding.[57] This review will help the staff assess whether these factors promote standard setting that is accountable, independent, and free from undue influence that could affect the ability of U.S. investors to receive full, fair, and reliable disclosure. Full, fair, and reliable disclosure is essential to facilitate the meaningful comparison of financial information across national borders.

C. Investor Understanding and Education Regarding IFRS

The Commission's Proposed Roadmap reflects its belief that U.S. investors would benefit from the use of a single set of high-quality accounting standards that are used consistently in the global capital markets. In the Proposed Roadmap, the Commission stated that a single set of global accounting standards could enhance the ability of investors to compare financial information of U.S. companies with that of non-U.S. companies. Improved comparability was the most commonly cited reason commenters believed that U.S. capital markets would benefit from the use of a single set of global accounting standards.[58] Because the benefits of adopting a single set of high-quality globally accepted accounting standards would be realized only if investors understood and had confidence in the financial reporting system, the Commission believes that in order to assess incorporation of IFRS into the U.S. financial reporting system, further work is necessary to assess investor understanding and education regarding IFRS. The staff's performance of the steps in the Work Plan should provide the staff with insight into investors' understanding of IFRS and actions that

[48] *Id. See also* 2007 Concept Release.

[49] *See* 2007 Adopting Release.

[50] *See* Proposed Roadmap.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *See, e.g.,* comment letters from Maverick Capital, CII, and CFA on the proposing release: *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to U.S. GAAP,* Release No. 33–8818 (July 2, 2007) [72 FR 37962 (July 11, 2007)].

[56] *See, e.g.,* comment letters from CalPERS and CFA.

[57] The IASB, an accounting standard-setting body based in London, was established to develop global standards for financial reporting. The IASB is overseen by the IFRS Foundation (formerly called the "IASC Foundation"; this organization has been renamed as a result of recent amendments to its Constitution, effective March 1, 2010). The IFRS Foundation is responsible for the activities of the IASB. While national accounting standard setters traditionally have been accountable to a national securities regulator or other government authority, until 2009, the IFRS Foundation did not have a formal link with any national securities regulators. Recognizing that a relationship with national securities regulators would enhance the public accountability of the IFRS Foundation, its trustees agreed on amendments to its Constitution to establish a link between the IFRS Foundation and a Monitoring Board composed of public capital markets authorities, including the Commission, charged with the adoption or recognition of accounting standards used in their respective jurisdictions. For further information on the governance structure and operation of the IASB, *see http://www.iasb.org.*

[58] *See, e.g.,* AICPA, FEE, PPL, and TransCanada Corporation.

need to be taken to increase investors' understanding.

D. Examination of the U.S. Regulatory Environment That Would Be Affected by a Change in Accounting Standards

The Commission acknowledges that the incorporation of IFRS into the financial reporting system for U.S. issuers could have far-reaching effects on financial reporting by U.S. issuers for other purposes. In addition to filing financial statements with the Commission, U.S. issuers commonly provide financial information to a wide variety of other parties for different purposes. While the federal securities laws provide the Commission with the authority to prescribe accounting principles and standards to be followed by public companies and other entities that provide financial information to the Commission and investors, the Commission does not directly prescribe the provision and content of information that U.S. issuers provide to parties other than it and investors.[59] However, changes to the Commission's accounting standards could affect issuers and the information they provide to regulatory authorities and others that rely on U.S. GAAP as a basis for their reporting regimes.[60] In accordance with the Work Plan, the staff will study and consider other regulatory effects of mandating IFRS for U.S. issuers.

E. The Impact on Issuers, Both Large and Small, Including Changes to Accounting Systems, Changes to Contractual Arrangements, Corporate Governance Considerations, and Litigation Contingencies

In considering incorporation of IFRS into the U.S. financial reporting system, the Commission must assess the significant effects that such changes would have on the preparers of financial statements—the thousands of companies that file financial statements with the Commission under the federal securities laws. In addition to the significant effects that a transition would have on investors, the issuers of financial statements would incur costs, effort, and time as a result of a transition. Smaller companies and those without international operations will bear those costs and efforts differently than larger companies and those that compete globally. As part of the Work Plan, the staff will consider the impact of the logistical changes involved in incorporating IFRS into the U.S. financial reporting system. The extent of that impact may be decreased by ongoing convergence efforts between the IASB and the FASB.

F. Human Capital Readiness

As contemplated by the Proposed Roadmap, incorporation of IFRS would require consideration of the readiness of all parties involved in the financial reporting process, including investors, preparers, auditors, regulators, and educators. As a result, any change involving the incorporation of IFRS into the financial reporting system for U.S. issuers would require greater familiarity of IFRS for investors, preparers, auditors, regulators, academics, and many others. Under the Work Plan, the staff will review the effect of the incorporation of IFRS on the education and training of professionals involved in the financial reporting process as well as any impact on auditor capacity.

V. Potential Transition Matters

Many commenters on the Proposed Roadmap expressed concern about having appropriate transition time to plan for and implement any changes that would be needed in connection with a further move toward incorporation of IFRS in domestic financial reporting.[61] Commenters also indicated that the Proposed Roadmap had created a significant amount of uncertainty for market participants about how any proposed changes would affect them and whether they should begin immediately to allocate resources to prepare for use of IFRS.[62]

We acknowledge that the changes to our current financial reporting system that would be necessary to transition to a single set of global accounting standards, including the incorporation of IFRS for U.S. issuers, could represent a fundamental change that would require significant transition time and effort for issuers, investors, and others. Several steps in the Work Plan, including progress toward completion of convergence, focus on providing the Commission with additional information about the magnitude of these changes and the logistics necessary for implementing them. This information will enable the Commission to consider the plans that would need to be implemented in a move to incorporate IFRS into the financial reporting system for U.S. issuers, including providing sufficient time to efficiently and effectively implement any changes in accounting standards.

The Proposed Roadmap proposed to allow certain large U.S. issuers the option of preparing their financial statements using IFRS beginning with filings for fiscal years ending on or after December 15, 2009. A significant group of commenters disagreed with an early use option, generally because of the increased complexity, lack of comparability between U.S. issuers under a dual system, and the possibility of companies opportunistically selecting which system of accounting standards to apply.[63] Alternative strategies proposed by this group varied widely, and included the optional use of IFRS during any contemplated transition period to a single set of global accounting standards.[64] Some commenters suggested an open option for all issuers or, at least, a significantly expanded group of issuers.[65]

The Commission is not foreclosing the possibility in the future that issuers may be permitted to choose between IFRS and U.S. GAAP, nor is the Commission foreclosing the possibility of some manner of early use or adoption approach. The conditions for early adoption, however, would depend on the overall approach to incorporate IFRS into the U.S. financial reporting system for U.S. issuers. As that overall approach remains under evaluation, we are not actively pursuing rulemaking to provide for an early use option at this time.[66]

VI. Role of the FASB

The FASB is the independent, private-sector accounting standard-setting body for the United States. Since 1973, the Commission has recognized the FASB's pronouncements establishing and amending accounting principles as "authoritative" and "generally accepted" for purposes of the federal securities laws, absent any contrary determination by the Commission.[67] After enactment of the

[59] *Id.*

[60] *Id.* For example, U.S. issuers often provide U.S. GAAP-based financial information to various federal and state regulators, including regulators of financial institutions, insurance companies and public utilities. Another example of the effect on reporting to others relates to federal and state income taxes. Existing U.S. GAAP is the predominant set of accounting standards used in the United States, and the Internal Revenue Code has developed over time in reliance on such accounting standards.

[61] *See, e.g.,* AICPA, Cymer, Inc., and Graybar.

[62] *See, e.g.,* Best Buy Co., Inc., Cisco Systems, Inc., and Fannie Mae.

[63] *See, e.g.,* CalPERS, CFA, CII, ICGN, and ITAC.

[64] *See, e.g.,* Ernst & Young LLP and PwC.

[65] *See, e.g.,* Abbott, AICPA, and S&P.

[66] Accordingly, we are withdrawing the proposed rules for limited early use of IFRS by certain U.S. issuers.

[67] *See Statement of Policy on the Establishment and Improvement of Accounting Principles and Standards,* Accounting Series Release No. 150 (December 20, 1973) (expressing the Commission's intent to continue to look to the private sector for leadership in establishing and improving

Continued

Act, the Commission reaffirmed the recognition of the financial accounting and reporting standards of the FASB as "generally accepted" for purposes of the federal securities laws.[68]

Some commenters believed the lack of clarity in the Proposed Roadmap regarding the future role of the FASB has created unnecessary uncertainty. Commenters offered divergent opinions about whether the Commission should maintain a relationship with the FASB as the U.S. national accounting standard setter in lieu of directly relying on the IASB.[69]

We believe the FASB will continue to play a critical and substantive role in achieving the goal of global accounting standards. The FASB is the accounting standard setter for the U.S. capital markets, and it should continue to work with the IASB to improve accounting standards. Moreover, that role would remain critical after adoption of global standards. In this regard, we have considered the role that other national standard setters have maintained in connection with their consideration of IFRS. In particular, one organization with national regulatory responsibilities noted in its comment letter on the Proposed Roadmap that the continued existence of a national standard setter allows for more effective working relationships with the IASB and helps the IASB have an effective dialogue with constituents in that country.[70] We note many developed countries have maintained a national standard setter or other mechanisms in connection with the incorporation of IFRS into their capital markets.[71]

As part of the staff's execution of the Work Plan, it will continue to analyze the nature of the appropriate and ongoing role of the FASB should IFRS be incorporated into the U.S. financial reporting system for U.S. issuers.

VII. Regulatory Requirements

This statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the Administrative Procedure Act ("APA"). Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or another statute, are not applicable.

Dated; February 24, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Work Plan for the Consideration of Incorporating International Financial Reporting Standards Into the Financial Reporting System for U.S. Issuers

Office of the Chief Accountant United States Securities and Exchange Commission

This is a report by the Staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.

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accounting principles and standards through the FASB) and the 2003 Policy Statement.

[68] *See* 2003 Policy Statement.

[69] NASBA and CalPERS expressed the view that the Commission should maintain a relationship with the FASB, whereas KPMG LLP expressed the view that the Commission should recognize the IASB as the single accounting standard setter.

[70] *See* U.K. Financial Reporting Council.

[71] For example, the European Union ("EU"), which required the use of IFRS as the accounting standards for companies incorporated in one of its Member States and whose securities are listed on an EU-regulated market beginning with their 2005 financial year, uses the European Financial Reporting Advisory Group to provide technical advice to the European Commission in connection with the EU's mechanism for endorsement of IFRS.

Background

In the 2010 Statement,[72] the U.S. Securities and Exchange Commission ("SEC" or "Commission") directs the staff of the Office of the Chief Accountant of the SEC, with appropriate consultation with other Divisions and Offices of the Commission (collectively, the "Staff"), to develop and execute a work plan ("Work Plan"). The purpose of the Work Plan is to consider specific areas and factors relevant to a Commission determination of whether, when, and how our current financial reporting system for U.S. issuers should be transitioned to a system incorporating International Financial Reporting Standards ("IFRS").[73] Specifically, the Work Plan addresses areas of concern that were highlighted by commenters on the Commission's proposed *Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers,*[74] including:

1. Sufficient development and application of IFRS for the U.S. domestic reporting system;
2. The independence of standard setting for the benefit of investors;
3. Investor understanding and education regarding IFRS;
4. Examination of the U.S. regulatory environment that would be affected by a change in accounting standards;
5. The impact on issuers, both large and small, including changes to accounting systems, changes to contractual arrangements, corporate governance considerations, and litigation contingencies; and
6. Human capital readiness.

The first two areas above consider characteristics of IFRS and its standard setting that would be the most relevant to a future determination by the Commission regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. The remaining four areas above relate to transitional considerations that will enable the Staff to better evaluate the scope of, timing of, and approach to changes that would be necessary to effectively incorporate IFRS into the financial reporting system for U.S. issuers, should the Commission determine in the future to do so.

In formulating this initial Work Plan, the Staff considered commenters' views that U.S. issuers would need approximately four to five years to successfully implement a change in their financial reporting systems to incorporate IFRS.[75] Therefore, assuming that the Commission determines in 2011 to incorporate IFRS into the U.S. financial reporting system, the first time U.S. issuers would report under such a system would be approximately 2015 or 2016. The Staff will further evaluate this timeline as a part of the Work Plan.

While an ultimate determination of any specific methods (*e.g.,* convergence, standard-by-standard adoption, wholesale adoption) or dates for the possible incorporation of IFRS into the financial reporting system for U.S. issuers is beyond the scope of the Work Plan, the information obtained through the Work Plan will facilitate future Commission consideration of those matters. Further, while the Work Plan focuses on the implications of incorporation of IFRS into the financial reporting system for U.S. issuers on U.S. constituents, the Staff also will consider the effects of its recommendations to the Commission on other jurisdictions that have incorporated or have committed to incorporate IFRS into their financial reporting systems.

Each area is important to the Staff's consideration of the most effective approach to advance the Commission's objective of achieving a single set of high-quality globally accepted accounting standards. The Staff, however, did not develop the Work Plan with the intention that any one step is individually determinative of the optimal path forward. Further, for many of the steps, the Staff is seeking to assess the degree to which a particular attribute or condition exists for consideration of how the topic interacts with policy considerations. The Staff does not view the objective of its efforts as being to determine whether an attribute "passes" or "fails" a pre-determined standard.

The Staff has developed this Work Plan based on its understanding of the current environment. The Staff intends to continually re-assess this Work Plan and adjust it as new information is obtained or developments occur. Further, of necessity, the Staff will modify this Work Plan in response to constraints encountered, such as limited availability of information, with the intention of accomplishing each section's stated objective to the maximum extent possible.

In executing this Work Plan, the Staff will gather information using a variety of methods, including, but not limited to, performing its own research; seeking comment from, holding discussions with, and analyzing information from constituents, including investors, issuers, auditors, attorneys, other regulators, standard setters, and academics; considering academic research; and researching the experiences of other jurisdictions that have incorporated or have committed to incorporate IFRS into their financial reporting systems and foreign private issuers who currently report under IFRS. The Staff will provide public progress reports beginning no later than October 2010 and frequently thereafter until the work is complete.

I. Sufficient Development and Application of IFRS for the U.S. Domestic Reporting System

A. Introduction

The 2010 Statement notes that "[a] necessary element for a set of global accounting standards to meet [the agency's mission] is that they must be high-quality * * *." The Commission previously has described high-quality standards as consisting of a "comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions."[76] The Commission also has expressed its belief that high-quality accounting standards "must be supported by an infrastructure that ensures that the standards are rigorously interpreted and applied."[77]

In the Proposed Roadmap, the Commission stated that, in further considering IFRS, it would "consider whether those accounting standards are of high-quality and sufficiently comprehensive." Accordingly, the Staff believes that an evaluation of whether IFRS is sufficiently developed and applied to be the single set of globally accepted accounting standards for U.S. issuers requires consideration of the following areas:

- The comprehensiveness of IFRS;
- The auditability and enforceability of IFRS; and
- The comparability of IFRS financial statements within and across jurisdictions.

As the Commission noted in the Proposed Roadmap, there are areas where completion of the IASB's standard-setting initiatives, including those included in its convergence agenda with the Financial Accounting Standards Board ("FASB"), as discussed in the 2010 Statement, should improve and further develop IFRS. The Commission further notes in the 2010 Statement, "[t]he successful completion of these efforts would be a significant accomplishment toward improving financial reporting for investors worldwide." As such, the Staff's efforts in the above areas will include consideration of the IASB's efforts to improve IFRS.

B. Comprehensiveness of IFRS

The Commission stated in the Proposed Roadmap that "IFRS is not as developed as [U.S. generally accepted accounting principles ('U.S. GAAP')] in certain areas." This is due, in part, to IFRS's relative youth, as articulated by one commenter:

"[W]e are concerned about quality and maturity of IFRS in comparison to * * * [U.S. GAAP]. U.S. GAAP has a long history and has been tested and refined through multiple and complex economic events and developments. Many of the standards in U.S. GAAP have emerged as a direct result of circumstances and events that demonstrated

[72] See *Commission Statement in Support of Convergence and Global Accounting Standards,* Release No. 33–9109 (February 24, 2010) ("2010 Statement").

[73] Hereafter, the term "IFRS" refers to "IFRS as issued by the International Accounting Standards Board ('IASB')" unless otherwise noted.

[74] Release No. 33–8982 (November 14, 2008) [73 FR 70816 (November 21, 2008)] ("Proposed Roadmap").

[75] *See, e.g.,* The Boeing Company ("Boeing"), Northrop Grumman Corporation ("Northrop Grumman"), PepsiCo, Inc. ("Pepsi"), and tw telecom inc ("tw telecom"). Comment letters in response to the Proposed Roadmap are available on the Commission's Web site (at *http://www.sec.gov/comments/s7-27-08/s72708.shtml*). Comments are also available for Web site viewing and printing 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. Unless otherwise noted, comment letters referenced in this Work Plan were submitted in response to the Proposed Roadmap and are cited by author.

[76] *International Accounting Standards,* Release No. 33–7801 (February 16, 2000) [65 FR 8896 (February 23, 2000)] ("2000 Concept Release").

[77] 2000 Concept Release.

the need for better and more transparent financial reporting (for example, the rise of derivative instruments and recent financial scandals such as the collapse of Enron) * * *."[78]

The Commission and commenters have noted limited IFRS guidance in two respects. First, IFRS lacks broad guidance for: (1) Certain topical areas, such as accounting for certain common control transactions, recapitalization transactions, reorganizations, acquisitions of minority shares not resulting in a change of control and similar transactions, and the push down of a new accounting basis in an entity's separate financial statements; (2) certain industries, such as those related to utilities, insurance, extractive activities, and investment companies; and (3) disclosures in order to provide better transparency regarding the application of accounting principles.[79]

Second, where IFRS provides broad guidance, the IASB, as a matter of operating practice, has elected to make guidance less detailed and prescriptive than U.S. GAAP.[80] Commenters' views were mixed as to whether the lesser degree of detailed guidance under IFRS, as compared to U.S. GAAP, is indicative of a higher quality set of accounting standards. Commenters who preferred IFRS's approach asserted that it is less complex than U.S. GAAP and allows companies to capture the substance of transactions.[81] On the other hand, commenters who preferred U.S. GAAP's approach expressed that IFRS relies too much on management discretion, thereby increasing the potential for opportunistic accounting; creating challenges for auditors, as discussed in section I.C below; and reducing comparability, as discussed in section I.D below.[82]

Other commenters have argued, however, that this debate may not be relevant in the U.S. environment. For example, the FAF asserted in its comment letter that:

"[W]hile it is perceived that IFRS provides financial statement preparers more discretion in application than U.S. GAAP, such additional discretion may not result in major differences in the application of IFRS by U.S. companies because the U.S. institutional framework plays a major role in shaping how companies would apply the discretion."

The Staff will analyze for the Commission's benefit the extent to which IFRS is comprehensive so as to support a Commission decision regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Inventory areas in which IFRS does not provide guidance or where it provides less guidance than U.S. GAAP.
- Analyze how issuers, auditors, and investors currently manage these situations in practice.
- Identify areas in which issuers, auditors, and investors would most benefit from additional IFRS guidance.

C. Auditability and Enforceability

IFRS's less detailed and prescriptive guidance may or may not create challenges in its auditability and enforceability. If it were to do so, IFRS may "[make] litigation or enforcement outcomes more difficult to predict."[83] This outcome may be true not only within jurisdictions, but also across jurisdictions, as the existence of differing regulatory regimes and legal environments across jurisdictions may exacerbate the inconsistent interpretation and enforcement of IFRS. For example, the CFA Institute stated the following in its comment letter:

"Investors need greater assurance regarding the divergence of application within the principles-based standards of IFRS prior to adoption. Conversion to more principles-based standards that are applied inconsistently in different regulatory environments, auditing regimes and cultures may not be beneficial to investors."

Commenters raised several concerns regarding the auditability and enforceability of IFRS, including the risk of opportunistic accounting; the potential for accounting conclusions of preparers to be unfairly criticized by auditors, regulators, and investors; and diminished comparability.

First, regarding the risk of opportunistic accounting, some commenters expressed that IFRS allows for increased flexibility, as compared to U.S. GAAP, and may result in standards being less auditable and enforceable, which would not be in the public interest.[84] *For example, one commenter stated:*

"The international standards (IFRS) are widely viewed as less specific and providing less prescriptive guidance than U.S. GAAP (*i.e.,* IFRS are more principles based), as well as more subjective primarily due to more use of fair value measurements. The downgrading of verifiability as a key concept guiding accounting standard setting and the resulting focus on fair value measurement significantly impairs the ability of an auditor to limit opportunistic actions of management and improve financial reporting."[85]

Second, regarding the potential for accounting conclusions of preparers to be unfairly criticized by auditors, regulators, and investors, some commenters have expressed concerns that IFRS's less detailed and prescriptive guidance could expose companies to increased claims by shareholders and others seeking to challenge its application, given the perceived litigious environment in the United States.[86] The Staff has acknowledged similar concerns in the context of an objectives-oriented system, noting:

"We believe that the existence of a strong and consistently applied enforcement mechanism is a necessary component to the success of an objectives-oriented system. Preparers and auditors have expressed concern that those charged with enforcement in a principles-based environment will question reasonable judgments made in good faith (footnote omitted). In fact, some have asked whether the Commission staff would be willing to accept reasonable views and interpretations by preparers and auditors in the application of accounting principles (citation omitted)."[87]

However, the Staff also stated:

"We believe * * * that the concern over litigation uncertainty is sometimes overstated * * *. If preparers and auditors maintain contemporaneous documentation that demonstrates that they properly determined the substance of a covered transaction or event, applied the proper body of literature to it, had a sound basis for their conclusions-particularly those involving the exercise of judgment-and ensured through disclosure that their method was transparent, their exposure to litigation may be reduced."[88]

Some commenters stated that the U.S. legal system, which relies, to a larger extent, on guidance, rules, and bright lines, ultimately will drive IFRS to evolve, similar to U.S. GAAP, into a rules-based set of standards.[89] Accordingly, commenters advocated addressing the causes of rules-based standards, such as through changes to the U.S. legal and regulatory environment, and development of an accounting and auditing judgment framework to reassure issuers that

[78] CMS Energy Corporation and Consumers Energy Company. *See also, e.g.,* FedEx Corporation, Hess Corporation, Honeywell International ("Honeywell"), Northrop Grumman, and Andrea Psoras ("Psoras").

[79] *See, e.g.,* Proposed Roadmap. *See also, e.g.,* Financial Accounting Foundation ("FAF"), Investors Technical Advisory Committee ("ITAC"), Liberty Global, and Standard & Poor's Ratings Services. The Staff acknowledges that in certain of these specified areas, these concerns are equally applicable to U.S. GAAP.

[80] *See, e.g.,* Proposed Roadmap. *See also, e.g.,* Accretive Solutions, First Commonwealth Financial Corporation ("First Commonwealth"), and ITAC.

For example, as the FASB staff discussed in "Board Meeting Handout: Joint Revenue Recognition Project" (April 9, 2008) (available at: *http://www.fasb.org/04-09-08_rev.pdf*)), revenue recognition guidance under U.S. GAAP (prior to the FASB Codification) consisted of over 200 pieces of literature from various sources, whereas revenue recognition guidance under IFRS "lacks explicit measurement guidance. Although such measurement guidance exists in abundance in U.S. GAAP, IFRS suffers from the opposite extreme."

[81] *See, e.g.,* Alcoa Inc. ("Alcoa"), The Bank of New York Mellon, Federation of European Accountants ("FEE"), Institute of Chartered Accountants in England and Wales ("ICAEW"), and Gregory Misiorek.

[82] *See, e.g.,* First Commonwealth, Fund of Stockowners Rights ("Fund Stockowners Rights"), State of New York Banking Department ("NYBD"), Psoras, Sanctuary Financial Group, Inc., and tw telecom.

[83] Proposed Roadmap.

[84] *See, e.g.,* Fund Stockowners Rights, National Association of State Boards of Accountancy ("NASBA"), and Psoras.

[85] American Accounting Association, Financial Accounting Standards Committee ("AAA–FASC").

[86] *See, e.g.,* FPL Group, Inc. ("FPL") and tw telecom.

[87] "Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System" (July 25, 2003) ("Principles-Based Accounting System Study").

[88] Principles-Based Accounting System Study.

[89] *See, e.g.,* Air Products and Chemicals, Inc. ("Air Products"), Community Health Systems, Inc. ("Community Health"), JPMorgan Chase ("JP Morgan"), The London Centre for International Corporate Governance Law ("London Ctr Int'l Corp Gov Law"), and Edward Randle.

they will not be penalized for the use of reasonable judgment in the application of IFRS.[90]

The Staff also observed that the exercise of professional judgment in an objectives-oriented regime would require certain cultural changes, including: (1) A reduction in the tendency to ask questions like "where does the literature say I cannot do this," (2) a reduction in an audit checklist mentality, (3) an improvement in accounting professionals' understanding of the economic substance of a transaction, and (4) an improvement in the transparency of disclosures.[91]

Finally, IFRS's less detailed and prescriptive guidance, coupled with any diversity of perspectives amongst issuers, auditors, and regulators on a global basis may affect the comparability of financial statements prepared under IFRS. For example, in the auditing context, commenters raised concerns regarding the possibility that each audit firm will develop its own interpretations of IFRS,[92] resulting in reduced comparability across companies using different auditors. Some commenters went further by echoing concerns raised in the 2007 Concept Release [93] that IFRS also may contribute to reduced comparability within audit firms, due to the lack of internationally integrated accounting firms with a single global accounting perspective.[94]

Similarly, commenters expressed concern that differing regulation and enforcement structures and practice on a global basis may undermine the comparability of financial statements prepared under IFRS.[95] The Commission has noted that securities regulators have developed and continue to improve infrastructure to foster the consistent and faithful application and enforcement of IFRS around the world.[96] For example, in January 2007, an International Organization of Securities Commissions ("IOSCO") database for cataloguing and sharing securities regulators' experiences on IFRS application around the world became operational.[97] Further, the Commission and the Committee of European Securities Regulators ("CESR") published a work plan in August 2006, covering information sharing in regular meetings and the confidential exchange of issuer-specific information.[98] In addition to the coordination with organizations of securities regulators and under the CESR work plan, the Commission also has developed bilateral dialogues with particular securities regulators to discuss accounting and enforcement matters.

These recent developments were noted by the CFA Institute in its comment letter:

"[T]his coordinated effort and related processes [by members of IOSCO] are still being developed and the overall effectiveness of their regulatory oversight has not been fully demonstrated (*i.e.,* that the interpretation and enforcement of IFRS is consistent). The SEC should focus on how IFRS is being applied and ensure that studies about this are undertaken and widely circulated to all interested parties."

The Staff believes that the auditability and enforceability of financial statements prepared under IFRS is a key component in considering whether to incorporate IFRS into the financial reporting system for U.S. issuers. Accordingly, the Staff intends to gather data to inform the Commission in this regard. Specifically, the Staff will:

- Analyze factors that may influence the auditability of financial statements prepared under, and the enforceability of, IFRS.
- Evaluate factors that may influence the consistent audit of financial statements prepared under, and the enforcement of, IFRS.
- Identify potential changes to improve the auditability and enforceability of financial statements prepared under IFRS and to facilitate their consistent audit and enforcement.

D. Comparability Within and Across Jurisdictions

One of the primary benefits of a single set of global accounting standards is increased comparability of financial statements. However, as the Proposed Roadmap stated:

"The advantages to U.S. investors of increased comparability across investment alternatives, as contemplated under this Roadmap, are dependent upon financial reporting under IFRS that is, in fact, consistent across companies, industries and countries."

A number of factors may undermine the comparability of IFRS financial statements. As discussed above, the lesser degree of comprehensiveness and the challenges of consistent audit and enforcement of IFRS financial statements may affect their comparability. In addition, jurisdictional variations in the application of IFRS, the optionality within IFRS, and inconsistencies arising from differences in the translation of IFRS also may reduce the benefits of IFRS as a single set of global accounting standards.[99]

Some sources indicate that more than 100 countries "require or allow the use" of IFRS.[100] At the same time, there is the real possibility of jurisdictional variations, which could undermine comparability. Jurisdictional variations may arise from both authoritative and informal application guidance, changes made to the standards for purposes of use within a jurisdiction, and variations in the times it may take separate jurisdictions to complete their respective processes to enact into law or otherwise adopt new or amended standards. Historical approaches and cultural differences also may give rise to jurisdictional variations.

Commenters frequently cited concerns regarding the existence of and future potential for jurisdictional variations of IFRS.[101] Similarly, the Commission noted that "the extent to which IFRS is adopted and applied globally, and whether IFRS is adopted and applied in foreign jurisdictions as issued by the IASB or as jurisdictional variations of IFRS" "may influence the degree to which comparability may be achieved through widespread adoption of IFRS." [102]

Regarding optionality, the SEC's Advisory Committee on Improvements to Financial Reporting ("CIFiR") and others have asserted that IFRS's permitted alternative accounting treatments in a number of areas "contribute to avoidable complexity by making financial reports less comparable." [103]

In the Proposed Roadmap, the Commission expressed that:

"IFRS * * * in certain areas permits a greater amount of options than in U.S. GAAP * * * [This] greater optionality in IFRS could reduce comparability of reported financial information, as different issuers may account or provide disclosure for similar transactions or events in different ways[,] but this flexibility also allows a financial statement that may more closely reflect the economics of transactions."

To counter any diminished comparability, commenters expressed the need for greater transparency around divergence in application.[104] However, as one commenter noted, extensive footnote disclosures explaining how management has applied its discretion "will place the burden upon the user of the financial statements to understand and interpret the differences between companies * * *." [105]

In light of the these concerns, the Staff will analyze for the Commission's benefit the

[90] *See, e.g.,* American Institute of Certified Public Accountants ("AICPA"), California Society of Certified Public Accountants ("CA CPAs"), Center for Audit Quality ("CAQ"), Deloitte & Touche LLP ("Deloitte"), McGladrey & Pullen LLP ("McGladrey"), Morgan Stanley, NYBD, and The Ohio Society of CPAs ("Ohio CPAs").

[91] *See* Principles-Based Accounting System Study.

[92] *See, e.g.,* Community Health, Eli Lilly and Company ("Eli Lilly"), and Marriott International, Inc. ("Marriott").

[93] In *Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards,* Release No. 33–8831 (August 7, 2007) [72 FR 45600 (August 14, 2007)] ("2007 Concept Release"), the Commission stated, "for the U.S. firms that are members of global audit networks, systems of quality control need to foster the high quality and consistent application of IFRS across national borders."

[94] *See, e.g.,* London Ctr Int'l Corp Gov Law.

[95] *See, e.g.,* California Public Employees' Retirement System ("CalPERS"), Cleary Gottlieb Steen & Hamilton LLP, Group of North American Insurance Enterprises, and International Corporate Governance Network ("ICGN").

[96] *See* 2007 Concept Release.

[97] *See Id.*

[98] *See Id.*

[99] *See* Proposed Roadmap.

[100] *See, e.g.,* Deloitte Touche Tohmatsu, "Use of IFRSs by Jurisdiction." (available at: *http://www.iasplus.com/country/useias.htm*)

[101] *See, e.g.,* Corporate Roundtable on International Financial Reporting ("CRIFR"), The Davey Tree Expert Company ("Davey Tree"), Institute of Chartered Accountants of Scotland ("ICAS"), KPMG LLP ("KPMG"), The Lubrizol Corporation, McDonald's Corporation ("McDonald's"), Mead Westvaco Corporation ("Mead Westvaco"), NASBA, The Travelers Companies, Inc. ("Travelers"), and Tuesday Morning Corporation ("Tuesday Morning").

[102] Proposed Roadmap.

[103] "Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission" (August 1, 2008) ("CIFiR Final Report"), page 50. (available at: *http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf*)

[104] *See, e.g.,* CFA Institute ("CFA") and ITAC.

[105] tw telecom.

extent to which financial statements prepared under IFRS are comparable within and across jurisdictions so as to support a Commission decision regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze factors that may influence the degree of comparability of financial statements prepared under IFRS on a global basis.
- Assess the extent to which financial statements prepared under IFRS may not be comparable in practice and how investors manage these situations.
- Identify ways to improve the comparability of financial statements prepared under IFRS on a cross-border basis to provide the most benefit for investors.

II. Independent Standard Setting for the Benefit of Investors

A. Introduction

The 2010 Statement notes that "[a]nother important element for a set of high-quality global accounting standards is whether the accounting standard setter's funding and governance structure support the independent development of accounting standards for the ultimate benefit of investors." To provide the Commission with the information necessary to determine whether the IASB is sufficiently independent for IFRS to be the single set of high-quality globally accepted accounting standards for U.S. issuers, the Staff will analyze four areas in particular:

- Oversight of the IFRS Foundation (formerly called the "International Accounting Standards Committee ('IASC') Foundation"); [106]
- Composition of the IFRS Foundation and the IASB;
- Funding of the IFRS Foundation; and
- IASB standard-setting process.

B. Oversight of the IFRS Foundation

The IASB was established to develop global standards for financial reporting.[107] The IASB is overseen by the IFRS Foundation, which is responsible for the activities of the IASB and other work that centers on IFRS, such as initiatives related to translation of IFRS from the English language, education about IFRS, and the development of interactive data taxonomies for IFRS.[108]

National accounting standard setters traditionally have been accountable to a national securities regulator or other government authority. In the United States, the FASB is overseen by the Commission. Until 2009, the IFRS Foundation did not have a similar link with any national securities regulators and public capital market authorities.[109]

The Commission has long supported enhanced governance of the IFRS Foundation (and its predecessor, the IASC), which includes independent oversight representing the public interest.[110]

Recognizing that a relationship with public capital market authorities would enhance the public accountability of the IFRS Foundation, the Trustees amended the IFRS Foundation's Constitution to establish a connection between the IFRS Foundation and a Monitoring Board [111] composed of public capital market authorities charged with the adoption or recognition of accounting standards used in their respective jurisdictions.

Commenters noted that recent events have demonstrated the significant pressure that can be exerted on a standard setter and acknowledged that the establishment of the Monitoring Board was an important step in improving the public accountability of the IFRS Foundation.[112] However, some commenters suggested improvements to the Monitoring Board [113] and urged that the Monitoring Board should include representatives from the investment community, analysts, auditors, and preparers, as well as national and regional regulators.[114] A number of commenters noted that additional time is needed to determine the effect that the Monitoring Board will have on the public accountability of the IFRS Foundation and the IASB.[115]

The Staff believes that effective oversight is critical to any decision to incorporate IFRS into the financial reporting system for U.S. issuers. The Staff will analyze for the Commission's benefit the extent to which the Monitoring Board is functioning as designed so as to support a Commission decision regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will analyze the operations of the Monitoring Board and assess any areas for improvement.

C. Composition of the IFRS Foundation and the IASB

The IFRS Foundation is governed by 22 trustees with geographically diverse backgrounds.[116] Trustees are appointed for a term of three years that is renewable once.

The IASB is currently composed of 15 full-time members who serve five-year terms subject to one re-appointment.[117] Full-time members are required to sever all employment relationships and positions that may give rise to economic incentives that might compromise a member's independent judgment in setting accounting standards. The IASB members come from ten countries [118] and have a variety of backgrounds (*e.g.,* auditors, investors, and preparers). In selecting IASB members, the Trustees must seek an appropriate mix, such that the IASB is not dominated by any particular constituency.

In response to feedback received through its current Constitution review, the IFRS Foundation has approved amendments to its Constitution, which:

- Emphasize the organization's commitment to developing standards for investors.

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[106] In January 2010, the IFRS Foundation Trustees ("Trustees") agreed to a number of changes to their Constitution, including changes to the names of several bodies within the organization, effective March 1, 2010. This Work Plan uses the revised names, except when citing a document issued under the predecessor name. *See* IASC Foundation, Trustees Announce Further Governance Enhancements (February 15, 2010). (available at: *http://www.iasb.org/News/Press+Releases/further+governance+enhancements.htm*)

[107] For more information on the structure and operation of the IASB, see www.iasb.org.

[108] *See* Proposed Roadmap.

[109] *See Id.*

[110] *See Id.; Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP,* Release No. 33–8879 (December 21, 2007) [73 FR 986 (January 4, 2008)] ("2007 FPI Adopting Release"); 2007 Concept Release; and 2000 Concept Release.

[111] For more information on the mission, duties, structure, and operation of the Monitoring Board, see "Charter of the IASCF Monitoring Board" (available at: *http://www.iasb.org/NR/rdonlyres/28B9BB17–79C8–4623–B043–B15F8D7A774D/0/Monitoring_Board_Charter.pdf*) and Memorandum of Understanding To Strengthen the Institutional Framework of the International Accounting Standards Committee Foundation (April 2009) (available at*: http://www.iasb.org/NR/rdonlyres/67B0EE51–56B8–4183–9958–CDAC52BC505C/0/MGMou060409.pdf*).

[112] *See, e.g.,* Alcoa, Ernst & Young LLP ("EY"), FEE, U.K. Financial Reporting Council ("FRC"), Potash Corporation of Saskatchewan Inc. ("Potash"), and Securities Industry and Financial Markets Association ("SIFMA").

[113] *See, e.g.,* Council of Institutional Investors ("CII") (suggested, for example, that the Monitoring Board duties include: (1) explicit responsibility for protecting and defending the independence of the IASB and (2) focus primarily on educating and communicating with the representatives of public authorities about the benefits of independent private-sector standard setting), Institut der Wirtschaftsprüfer in Deutschland (Institute of Public Auditors in Germany) ("IDW") (suggested the Monitoring Board participate in the appointment process and approve the appointment of Trustees, but not assume responsibility for Trustee appointment directly, so as to avoid overstepping the fine line between oversight and control of the IFRS Foundation).

[114] *See, e.g.,* CalPERS, CII, FRC (expressed the view that in due course the IFRS Foundation Monitoring Board should be extended to encompass official global organizations with a wider range of responsibilities, notably those with financial stability, banking, and insurance mandates, provided that the primary aim of accounting standards to improve information to providers of capital is respected), ICGN, and Nicholas Véron (observed that the current Monitoring Board is badly designed as it excludes important stakeholders. This commenter suggested that the Commission should promote the transformation of the Monitoring Board into a broader body that represents all the stakeholders, especially investor groups).

[115] *See, e.g.,* AICPA, Alcoa, Deloitte, Deutsche Bank AG ("Deutsche Bank"), FAF, FEE, FRC, IBM Corporation, ICAEW, IDW, Potash, tw telecom, and XenoPort, Inc. ("XenoPort").

[116] Six of the Trustees must be selected from the Asia/Oceania region, six from Europe, six from North America, one from Africa, one from South America, and two from any region, subject to maintaining overall geographical balance.

[117] As a result of changes to the IFRS Foundation's Constitution in January 2010, second terms will be limited to three years for IASB members not serving as the chair or vice chair. *See* Trustees Announce Further Governance Enhancements (February 15, 2010). (available at: *http://www.iasb.org/News/Press+Releases/further+governance+enhancements.htm*)

[118] As of February 2010.

• Provide for enhanced guidelines regarding the Trustees' geographical diversity.[119]

• Provide additional guidelines regarding geographical diversity of the IASB members to help ensure that membership of the IASB represents a broad international basis.[120]

• Increase the maximum number of members of the IASB to 16 by July 2012, with up to three positions being permitted for part-time members (There are no part-time members currently).[121]

Some commenters argued that all IASB members should be full time—for example, in order to avoid potential conflicts of interest with their outside employers.[122] Further, these commenters expressed the view that the IASB should include greater representation from investors, as the primary consumers of financial reports.

The Staff believes the composition of the IFRS Foundation and the IASB affects the independence of the IASB's standard-setting process. The Staff will analyze for the Commission's benefit the extent to which the composition of the IFRS Foundation and the IASB promotes the independent development of accounting standards for the ultimate benefit of investors so as to support a Commission decision regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will analyze the changes to the composition of the IFRS Foundation and the IASB and their effect on the IASB's ability to independently develop accounting standards for the ultimate benefit of investors.

D. Funding of the IFRS Foundation

Until 2008, the IFRS Foundation financed IASB operations largely through voluntary contributions from a wide range of market participants from across the world's capital markets, including from a number of firms in the accounting profession, companies, international organizations, central banks, and governments. Funding commitments were made for the period 2001–2005 and then were extended for an additional two years through 2007. In June 2006, the Trustees agreed on four characteristics [123] that should govern the establishment of a funding approach designed to enable the IFRS Foundation to remain a private-sector organization with the necessary resources to conduct its work in a timely fashion. The IFRS Foundation has no authority to impose funding regimes on countries, but the Trustees have worked closely with regulatory and other public authorities and key stakeholder groups on the creation of national regimes. Since 2008, efforts to change the financing basis of the IFRS Foundation have continued. Most funds are now obtained on a national basis from national standard setters and national capital market authorities.[124] The number of narrowly-based voluntary regimes is decreasing. Contributions from the major accounting firms also are decreasing.

The Commission previously has expressed concern that the IASB may be subject to a perceived or, potentially, an actual connection between the availability of funding and the outcome of its standard-setting process.[125] Similarly, the FCAG Final Report stated that in order for the IASB to protect its independence from undue influence, "the IASB must have a permanent funding structure under which sufficient funds are provided to it on an equitable and mandatory basis." In the Proposed Roadmap, the Commission expressed the view that its "future determination regarding the required use of IFRS for all U.S. issuers should only occur after the IFRS Foundation reaches its goal of securing a stable funding mechanism that supports the independent functioning of the IASB."

Similarly, many comment letters raised concerns about the independence and stability of the IASB's funding.[126] A number of commenters were concerned that the current voluntary nature of the contributions, as well as the source, might impact the apparent, or actual independence of the IASB.[127] Commenters expressed the view that establishing a stable, transparent funding framework for the IFRS Foundation would significantly reduce the concern that financial pressure could compromise the independence of the IASB's decision-making.[128]

The Staff recognizes that the United States has a significant interest in the stable funding of the IFRS Foundation [129] and is committed to exploring strategies to address this issue. Accordingly, the Staff will analyze for the Commission's benefit: (1) The extent to which the IFRS Foundation's sources of funding promote the independence of the IASB, and (2) possible funding mechanisms to provide the U.S.-based contribution to the IFRS Foundation. Specifically, the Staff will:

• Evaluate whether the Trustees' four characteristics governing the establishment of a funding approach are appropriate.

• Monitor the IFRS Foundation's funding arrangements to determine whether voluntary funding from individual organizations continues to be reduced and a stable, independent funding platform is secured.

• Explore alternatives for funding mechanisms in the United States.

E. IASB Standard-Setting Process

The IASB conducts projects necessary to develop high-quality standards. The *Due Process Handbook for the IASB* details procedures to be followed when setting standards, with an emphasis on how each stage of the process must address transparency and accessibility, extensive consultation and responsiveness, and accountability.[130]

The IASB solicits views and seeks input from the public throughout the standard-setting process, starting with selecting items for its agenda and including developing and publishing a discussion paper and/or exposure draft and issuing a final standard. Input is received from discussions at its project working group and roundtable meetings as well as written submissions from constituents.[131]

In the 2003 Policy Statement, the Commission stressed the importance of three components in the standard-setting process, as follows:

• Consideration of international convergence on high-quality accounting standards for the public interest and for the protection of investors;[132]

• Timeliness in completing projects, while satisfying appropriate public notice and comment requirements; and

• Objectivity in decision-making and careful consideration of the views of constituents and the expected benefits and perceived costs of each standard.

[119] *See* footnote 45, above.

[120] Membership of the IASB will be four members drawn from each of the Asia/Oceania region, Europe, and North America; one member from South America; one member from Africa; and two members from any area, subject to overall geographical balance.

[121] The Trustees concluded that the expansion of the IASB to 16 members would enable the IASB to discharge its increasing liaison functions in an improved manner, while not negatively affecting the efficiency of the IASB's deliberative processes.

[122] *See, e.g.,* CII and ICGN.

[123] The Trustees determined that characteristics of the new plan for 2008 would be broad-based, compelling, open-ended, and country-specific. See IASC Foundation, Annual Report 2006. (available at: *http://www.iasb.org/NR/rdonlyres/D95B6BF3–A12A–4C6C–BDA1–BDC98B4F2A45/0/IASCFoundationAnnualReportFinal.pdf*)

[124] *See* the list of long-term funding commitments on the IASB's Web site. (available at: *http://www.iasb.org/The+organisation/Governance+and+accountability/Financing/Long-term+funding+commitments.htm*)

[125] *See* Proposed Roadmap and 2007 FPI Adopting Release. *See also* "Report of the Financial Crisis Advisory Group" (July 28, 2009) ("FCAG Final Report"). (available at: *http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176156365880*). The Financial Crisis Advisory Group ("FCAG") was formed to advise the FASB and the IASB (collectively, the "Boards") about the standard-setting implications of the financial crisis and potential changes in the global regulatory environment. The members of the FCAG are senior leaders with broad international experience in the financial markets, observed by key global banking, insurance and securities regulators.

[126] *See, e.g.,* Association of Chartered Certified Accountants ("ACCA"), Alcoa, BEP, CAQ, Grant Thornton LLP ("GT"), McGladrey, PPL Corporation ("PPL"), PricewaterhouseCoopers LLP ("PwC"), UBS AG ("UBS"), United Technologies Corporation ("UTC"), and WellPoint, Inc.

[127] *See, e.g.,* American Accounting Association, Financial Reporting Standing Committee; CalPERS; CRIFR; and Institute of Management Accountants ("IMA").

[128] *See, e.g.,* CalPERS and IMA.

[129] In 2009, 33 companies based in the United States were expected to provide voluntary contributions, ranging widely in amount. See IASC Foundation, Information for Observers: IASCF Meeting with Monitoring Board (April 1, 2009). (available at: *http://www.iasb.org/NR/rdonlyres/B0B1770C–F414–4DCA–968D–505D521D1839/0/APMB2CFundingreport.pdf*)

[130] *See* IASC Foundation, *Due Process Handbook for the IASB* (October 2008) ("Handbook"). (available at: *http://www.iasb.org/NR/rdonlyres/1E8D75B7–927F–495B–BE4A–04C9BE967097/0/DueProcess09.pdf*)

[131] *See Id.*

[132] The effect of international convergence on the quality of IFRS will be evaluated in section I. Accordingly, in this section, this component of the standard-setting process will focus on accounting standards for the public interest and the protection of investors.

The following discussion will consider each of these components in the context of the IASB's standard-setting process.

1. Pre-eminence of Investors

In its final report, CIFiR asserted that:

Investor perspectives are critical to effective standards-setting, as investors are the primary consumers of financial reports. Only when investor perspectives are properly considered by all parties does financial reporting meet the needs of those it is primarily intended to serve. Therefore, investor perspectives should be given pre-eminence by all parties involved in standards-setting.'' [133]

Several commenters, including investor groups, expressed the view that greater investor representation on the IASB (and FASB) and related oversight groups would assist in meeting the primary objective of general purpose financial reporting (*i.e.,* providing useful information to investors in making business and economic decisions).[134] One commenter expressed the view that the lack of investor representation may expose those charged with governance to pressure from special interest groups to act in a manner that may not be compatible with the best interests of investors.[135]

The Staff notes the IFRS Foundation's recent efforts involving investor groups. Recently, two new members from the U.S. investor community have been appointed to the IASB.[136] In addition, the IASB has an advisory council—the IFRS Advisory Council (formerly called the "Standards Advisory Council") [137]—that is composed of approximately 40 individuals [138] drawn from geographically-diverse countries, some of which use IFRS and others that do not. The IFRS Advisory Council has an investor sub-group representing major investment organizations in the U.S. and internationally to allow for better engagement of the IASB and its staff with investor representatives.

The Staff intends to explore the extent to which the IASB promotes the pre-eminence of investor views. For example, the Staff will review the IASB's practices, as compared to the requirements detailed in the Constitution, Handbook, and other relevant IFRS Foundation and IASB documents and constituent expectations, to assess the IASB's focus on the pre-eminence of investor views.

2. Timeliness

The IASB normally allows a period of 120 days for comment on a discussion paper and exposure draft. For major projects (which are those projects involving pervasive or difficult conceptual or practical issues), the IASB normally will allow a period of more than 120 days for comments.

A commenter noted that the IASB's standard-setting process could be improved through prompt consideration to keep standards current and reflect emerging accounting issues and changing business practices. The commenter also noted that in rare circumstances, the IASB may need to shorten its due process period in order to achieve a timely solution.[139]

The Handbook allows for the IASB to have a shorter period of consultation, if required, of 30 days. Effective March 1, 2010, the Trustees revised their Constitution to include a provision to allow them, in exceptional circumstances, to authorize a shorter due process period. Authority would be given only with the approval of 75 percent of the Trustees after the IASB had made a formal request. The due process periods could be reduced but never dispensed with completely.

Recently, the FCAG addressed situations in which it may be appropriate for the Boards to expedite due process. The FCAG Final Report urged the Boards to adequately define the circumstances under which it is appropriate to act on the basis of expedited due process and develop procedures to ensure that, in such circumstances, the maximum consultation practicable is obtained.

The Staff believes that the standard-setting process requires a careful balance between timely resolution of emerging issues and sufficient due process. The Staff will analyze for the Commission's benefit the extent to which the IASB balances timely resolution of emerging issues and due process so as to support a Commission decision regarding whether to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will review the IASB's practices, as compared to the requirements detailed in relevant IFRS Foundation and IASB documents and constituent expectations, to assess the IASB's ability to resolve emerging issues in a timely and effective manner without compromising due process.

3. Objectivity

The Monitoring Board, of which the SEC Chairman is a member, recently stated that "[c]onfidence in the quality and integrity of the standards depends upon independence and transparency in the standard setter's due process." [140] The Monitoring Board statement expressed the view that robust participation by all interested parties is an essential element of due process.

Commenters expressed concerns regarding whether the independence of the IASB recently has been compromised.[141] A commenter further questioned whether the IFRS Foundation and the IASB have the ability and infrastructure to confront political pressure from governments around the world.[142]

Similarly, the FCAG observed that:

"[T]o develop standards that are high quality and unbiased, accounting standard setters must enjoy a high degree of independence from undue commercial and political pressures, but they must also have a high degree of accountability through appropriate due process, including wide engagement with stakeholders and oversight conducted in the public interest.[143]

The IASB relies on a number of practices and other factors to ensure that it considers a diversity of views, including:

- The IASB's meetings are open to public observers and broadcast over the internet.
- Meeting materials, comment letters received, and staff summaries of comment letters on discussion papers and exposure drafts are publicly available on the IASB Web site.[144]
- The IASB is assisted on IFRS interpretive matters by its IFRS Interpretations Committee (formerly called the "International Financial Reporting Interpretations Committee," or "IFRIC").[145]
- The IASB consults with the IFRS Advisory Council on single projects with a particular emphasis on practical application and implementation issues.[146]
- The IASB cooperates with national accounting standard setters and other official bodies concerned with standard setting in order to promote the convergence in accounting standards around the world.[147]
- The due process of the IASB is subject to the active oversight of the Trustee Due Process Oversight Committee.

The Staff will analyze for the Commission's benefit the extent to which the

[133] *See* CIFiR Final Report, page 57.

[134] *See, e.g.,* ICGN.

[135] *See* CFA.

[136] *See* "Two leading US analysts appointed to the IASB," IASB press release (May 21, 2009). (available at: *http://www.iasb.org/NR/rdonlyres/2BA72D82–ACFD–4899–89D9–4DB8151B44F2/0/PRTwoleadingUSanalystsappointedtotheIASB210509.pdf*)

[137] The IFRS Advisory Council supports the IASB and provides a forum where the IASB consults individuals and representatives of organizations affected by its work that are committed to the development of high-quality IFRS.

[138] A list of members is available at: *http://www.iasb.org/NR/rdonlyres/A0D53C88–8988–4B3F–8B0A–07B01DCBF975/0/MembershipSAC.pdf.*

[139] *See* FRC.

[140] Statement of the Monitoring Board for the International Accounting Standards Committee Foundation on Principles for Accounting Standards and Standard Setting (September 22, 2009). (available at: *http://www.iosco.org/monitoring_board/pdf/Monitoring_Board_of_IASCF_Statement_22092009.pdf*)

[141] *See, e.g.,* BEP, CFA, and ITAC.

[142] *See* MetLife, Inc. ("MetLife").

[143] *See* FCAG Final Report.

[144] *See* the IASB's Web site at *http://www.iasb.org* for more information on IASB process.

[145] The IFRS Interpretations Committee interprets IFRS and reviews accounting issues that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance, with a view to reaching consensus on the appropriate accounting treatment. The IFRS Interpretations Committee is comprised of fourteen voting members, appointed by the IFRS Foundation Trustees for renewable terms of three years, and two observers (IOSCO and the European Commission). Interpretations by the IFRS Interpretations Committee are ratified by the IASB prior to becoming effective.

[146] In 2008, the Trustees agreed to change the membership structure of the SAC, so that members would serve primarily as representatives of organizations. The Trustees believe that this adaptation of the IFRS Advisory Council will enable the IASB to receive views reflecting a wider range of interested parties and would give greater authority to views received. The Commission also participates as an observer of the IFRS Advisory Council.

[147] For additional information, see IASB, Statement of Best Practice: Working Relationships between the IASB and other Accounting Standard-Setters (February 2006). (available at: *http://www.iasb.org/NR/rdonlyres/8F20428C-BC3C-4CFE-A194-4386174C949D/0/SOBPFebruary2006final.pdf*)

IASB's standard-setting process is independent and objective. Specifically, in conjunction with the other steps in this section related to the oversight, composition, and funding of the IFRS Foundation and the IASB, the Staff will review the IASB's practices, as compared to the requirements detailed in relevant IFRS Foundation and IASB documents and constituent expectations, to assess the adequacy of the IASB's independence and objectivity during recent standard-setting efforts.

III. Investor Understanding and Education Regarding IFRS

A. Introduction

Incorporation of IFRS into the financial reporting system for U.S. issuers requires consideration of the impact on investors. This consideration includes focus on the extent to which the accounting standards and the standard-setting process promote the reporting of transparent and useful financial information to support investors in their investment decision-making process. In addition, this consideration requires an assessment of investor understanding and education regarding IFRS, as the main benefits to investors of a single set of high-quality globally accepted accounting standards would be realized only if investors understand and have confidence in the basis for the reported results.

Investor considerations regarding IFRS and investor confidence in IFRS and its standard setting are discussed in more detail in sections I and II, respectively. This section focuses on investor understanding and education regarding IFRS. In particular, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers, transitional considerations related to investor understanding and education regarding IFRS require evaluation to assess the scope of, timing of, and approach to changes that would be necessary for effective incorporation.

B. Investor Understanding and Education

IFRS currently differs from U.S. GAAP in a number of areas; consequently, incorporation of IFRS into the financial reporting system for U.S. issuers may require significant investor education regarding IFRS. However, as noted by one commenter, many U.S. investors already possess some understanding of IFRS due to global industry focus, cross-border investment decisions, and investments in foreign private issuers.[148] Moreover, through the convergence process undertaken by the Boards, we expect the differences between the two sets of standards should become fewer and narrower. As part of this Work Plan, the Staff will consider U.S. investors' current familiarity with IFRS and how they currently become educated about changes to accounting standards, in order to better assess the extent of investor educational effort necessary to effectively incorporate IFRS into the financial reporting system for U.S. issuers.

Because standard setters are continually improving accounting standards, mechanisms already exist for investors to become educated about the effects of changes to the accounting standards. By considering the general education process currently used by investors in understanding changes to U.S. GAAP, the Staff will evaluate how this process could apply to investor education with respect to IFRS in preparation for its potential incorporation into the financial reporting system for U.S. issuers. In addition, the staff will consider whether additional educational efforts are needed.

Existing mechanisms to educate investors traditionally are considered in the context of education after a standard has been developed. Also important, however, is investor education during the standard-setting process, which may occur in two ways. First, active investor outreach by the standard setters may increase both the extent and quality of understanding of new standards. In the past, both Boards have used a number of tools to facilitate investor, issuer, and auditor education about new standards, including education sessions, roundtables, and Web casts. Second, the Boards' convergence projects will be completed in accordance with their due process procedures, providing investors with time to become familiar with the new converged standards as they are developed. The Staff believes the effectiveness of these two areas in educating investors during the standard-setting process needs to be evaluated.

The Staff will analyze for the Commission's benefit how to promote investor understanding of IFRS, as well as the existing mechanisms to educate investors about changes in the accounting standards, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Conduct research aimed at understanding U.S. investors' current knowledge of IFRS and preparedness for incorporation of IFRS into the financial reporting system for U.S. issuers.
- Gather input from various investor groups to understand how investors educate themselves on changes in accounting standards and the timeliness of such education.
- Consider the extent of, logistics for, and estimated time necessary to undertake changes to improve investor understanding of IFRS and the related education process to ensure investors have a sufficient understanding of IFRS prior to potential incorporation.

IV. Regulatory Environment

A. Introduction

In addition to filing financial statements with the Commission, U.S. issuers commonly provide financial information to a wide variety of other parties for different purposes. While the federal securities laws provide the Commission with the authority to prescribe accounting principles and standards to be followed by public companies and other regulated entities that file financial statements with the Commission, the provision and content of information to other regulators generally is not determined by the Commission.[149] However, these other regulators frequently rely on U.S. GAAP as a basis for their regulatory reporting regimes.

Therefore, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers, transitional considerations related to the role of financial reporting in various regulatory regimes and how such incorporation would affect issuers, investors, and others in those contexts, require evaluation to assess the magnitude and logistics of changes that would be necessary for effective incorporation.

Accordingly, this section explores considerations related to the following:

- Manner in which the SEC fulfills its mission;
- Industry regulators;
- Federal and state tax impacts;
- Statutory dividend and stock repurchase restrictions;
- Audit regulation and standard setting;
- Broker-dealer and investment company reporting; and
- Public versus private companies.

B. Manner in Which the SEC Fulfills its Mission

Incorporation of IFRS into the financial reporting system for U.S. issuers may affect the manner in which the Commission fulfills its mission in two ways. First, the Commission must consider how to incorporate IFRS into its rules and regulations and Staff application guidance, to the extent they refer to accounting standards and requirements. Second, as stated in the Commission's 2003 Policy Statement:

"The federal securities laws set forth the Commission's broad authority and responsibility to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws (citations omitted), as well as its responsibility to ensure that investors are furnished with other information necessary for investment decisions. To assist it in meeting this responsibility, the Commission historically has looked to private-sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards.''

Commenters questioned how a move to IFRS would affect the Commission's relationship with the standard setter. For example, some questioned whether, under securities law, as amended by the Sarbanes-Oxley Act, the SEC has the ability to designate the IASB as the U.S. standard setter.[150] If the IASB were designated as the U.S. standard setter, commenters observed that the Proposed Roadmap is unclear as to how the Commission would exercise oversight of the IASB. Accordingly, commenters urged the Commission to determine how it would react in a crisis situation and how the Commission would protect U.S. investors if the IASB did not address U.S.-specific issues in a timely

[148] *See* EY.

[149] *See* Proposed Roadmap.

[150] *See, e.g.,* American Bar Association Business Law Section ("ABA Committee").

manner.[151] For example, some commenters indicated the Commission should retain the authority to interpret IFRS.[152]

At the same time, other commenters have cautioned against a "U.S. version of IFRS,"[153] as follows:

"We do not believe the Commission should supplement any missing accounting or disclosure requirements or the financial statements would not be considered to be prepared in accordance with IFRS as issued by the IASB. We believe any additional disclosures the Commission would consider requiring should be included outside of the audited financial statements.''[154]

In response to these concerns, the 2010 Statement states:

"[The Commission] believe[s] the FASB will continue to play a critical and substantive role in achieving the goal of global accounting standards. The FASB is the accounting standard setter for the U.S. capital markets, and it should continue to work with the IASB to improve accounting standards. Moreover, that role would remain critical after adoption of global standards.''

The Staff will analyze for the Commission's benefit the impact on Commission rules and procedures and potential approaches for the ongoing role of the FASB in accounting standard setting and interpretation, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze references to accounting standards and requirements in existing Commission rules and interpretations and Staff application guidance to identify the extent of, logistics for, and estimated time necessary to implement any changes prior to such incorporation.
- Consider how, if at all, such incorporation would affect the nature, manner, or frequency in which the Commission and its Staff provide interpretative accounting guidance and enforce accounting standards, and the extent of, logistics for, and estimated time necessary to implement any changes.
- Analyze approaches to the FASB's ongoing role in accounting standards used in the United States, and the extent of, logistics for, and estimated time necessary to undertake these approaches.

C. Industry Regulators

In the Proposed Roadmap, the Commission observed:

"Various federal and state regulators, including regulators of financial institutions, insurance companies and public utilities, are provided with periodic financial information on an on-going basis. For example, U.S. GAAP financial statements frequently are used as the basis for determining capital requirements for financial institutions.''

Due to the prevalence of financial information provided to different U.S. regulators, incorporation of IFRS into the financial reporting system for U.S. issuers may significantly affect different regulators and issuers subject to those regulators' compliance requirements. As such, it is important to identify the full range of regulatory regimes that rely on information developed for financial reporting purposes.

A number of commenters suggested that the Commission determine the extent to which industry regulators would continue to accept financial statements prepared for SEC reporting purposes as a starting point for regulatory filings.[155] Otherwise, commenters cautioned that a move to IFRS for financial reporting purposes risks creating costly dual-reporting requirements for issuers.[156] Further, if regulators continue to accept reporting prepared for SEC purposes, any changes in the reporting as a result of incorporating IFRS could have regulatory impacts. The Staff recognizes that acceptance of IFRS-based financial statements by industry regulators may have consequences on issuers and others that require analysis.

The Staff will analyze for the Commission's benefit the effects on issuer compliance with industry regulatory requirements, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze the effects on issuer compliance with industry regulatory requirements.
- Consider the impact of a change in SEC reporting on industry regulators.
- Analyze constituent concerns associated with any potential changes, or lack thereof, to regulatory regimes.

D. Federal and State Tax Impacts

Incorporation of IFRS into the financial reporting system for U.S. issuers also could affect federal and state tax regulations (*e.g.,* Internal Revenue Code).[157] As explained in the Proposed Roadmap:

"As the Internal Revenue Code has developed over an extended period of time with existing U.S. GAAP as the predominant set of accounting standards used in the United States, certain interactions exist between certain provisions of U.S. GAAP and income tax requirements. For example, the Internal Revenue Code has conformity provisions related to the method of accounting for inventory for tax reporting purposes and the method used for reporting to shareholders (and other owners or beneficiaries) or for credit purposes.[158] IFRS does not allow for the use of last-in, first-out, or LIFO, method of accounting for inventory. As a result, a company that reports in accordance with IFRS would be required to use a method of accounting for inventory that is acceptable under IFRS, for example the first-in, first-out, or FIFO, method. U.S. issuers changing to FIFO for financial reporting purposes may experience a change in taxable income based on the difference between inventory valued on a LIFO basis and on a FIFO basis.''

If federal and state tax regulators maintained their current tax codes, companies may experience a significant increase in the number of book-tax differences they would be required to track upon incorporation of IFRS into the financial reporting system for U.S. issuers. Several commenters expressed that because of the high cost that otherwise would be incurred in maintaining two sets of records, the U.S. Internal Revenue Code, as well as state and local tax codes and related regulations, would need to be modified.[159]

Alternatively, if federal and state tax regulators continued to align their tax codes with reporting for SEC purposes, companies may experience significant changes to their expected tax liabilities. Commenters expressed that the SEC should work with the Internal Revenue Service and other tax authorities to mitigate the LIFO transitional issue,[160] as well as address the transfer pricing arrangements and franchise tax considerations that may be affected in the transition.[161]

The Staff will analyze for the Commission's benefit the effects on federal and state tax regulations, as well as issuers subject to such regulations, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze the effects on federal and state tax regulations, as well as issuers subject to such regulations.
- Consider the impact of a change in SEC reporting on federal and state tax regulators.
- Analyze constituent concerns associated with any potential changes, or lack thereof, to federal and state tax regulation.

E. Statutory Dividend and Stock Repurchase Restrictions

Certain legal standards may be tied to amounts determined for financial reporting purposes. For example, companies may declare dividends to or repurchase stock from shareholders. While the amount, timing, and manner of payment of dividend distributions and stock repurchases are typically determined by the companies' boards of directors, the amount available may be restricted by state statute. For example, some jurisdictions provide that dividends may only be paid from retained earnings or may be paid from current earnings despite an accumulated deficit.

To the extent that jurisdictions base legal standards on amounts determined for

[151] *See, e.g.,* Darden Restaurant, Inc. ("Darden") and Intel Corporation ("Intel").

[152] *See, e.g.,* ABA Committee and Travelers.

[153] *See* section I.D for further discussion regarding jurisdictional variations of IFRS.

[154] PPL. *See also, e.g.,* Cisco Systems, Inc. ("Cisco") and Liberty Global.

[155] *See, e.g.,* Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of Thrift Supervision (collectively, "BankReg"), Committee of Annuity Insurers, Dominion Resources Services ("Dominion"), First Data Corporation ("First Data"), and National Association of Regulatory Utility Commissioners ("NARUC").

[156] *See, e.g.,* Boeing and Honeywell.

[157] 26 U.S.C. 1 *et seq.* [1986.]

[158] *See* Section 472 of the Internal Revenue Code (26 U.S.C. 472).

[159] *See, e.g.,* Allergan, Inc. and tw telecom.

[160] *See, e.g.,* KPMG, The LIFO Coalition ("LIFO"), and National Association of Wholesaler-Distributors.

[161] *See* KPMG.

financial reporting purposes, incorporation of IFRS into the financial reporting system for U.S. issuers could affect a company's ability to undertake certain actions and an investor's expectations in that regard. In addition, to the extent that legal standards do not change based on changes in SEC reporting, companies would need to maintain two sets of records. Accordingly, the Staff will analyze for the Commission's benefit the effects on such legal standards, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze the effect of such incorporation on legal standards, such as a company's ability to pay dividends or repurchase stock, on issuers and investors.
- Consider the impact of a change in SEC reporting on state statutes in this regard.
- Analyze constituent concerns associated with any potential changes, or lack thereof, to such state statutes.

F. Audit Regulation and Standard Setting

Another regulatory body that may be affected by incorporation of IFRS into the financial reporting system for U.S. issuers is the Public Company Accounting Oversight Board ("PCAOB"), which is responsible for overseeing public company audit firms and establishing audit, quality control, ethics, and independence standards used by those firms.[162] The Proposed Roadmap and commenters raised two primary considerations related to the PCAOB. First, commenters questioned whether a move to global accounting standards should be coupled with a move to global auditing standards in the United States, for example, through convergence of PCAOB standards with or adoption of auditing standards issued by the International Accounting and Assurances Standards Board.[163] Second, commenters noted that PCAOB auditing standards may require better alignment with IFRS. For example, one commenter expressed a general concern that there would be a mismatch between the less prescriptive standards in IFRS and U.S. auditing standards.[164] In addition, the Proposed Roadmap identified a general need for conforming amendments to PCAOB standards where they refer to current U.S. GAAP literature.

Commenters also provided specific examples of PCAOB auditing standards that may require better alignment with IFRS. For example, commenters suggested that the PCAOB issue additional guidance for auditors engaged in auditing market risk information included in the audited financial statements pursuant to IFRS 7 (currently U.S. issuers provide similar information outside the financial statements pursuant to Item 305 of Regulation S–K).[165]

Further, the Proposed Roadmap discussed the audit of legal contingencies as follows:

"One of the conditions under IFRS for recognizing a provision for a legal contingency is that it is more likely than not that an obligation exists (footnote omitted). This recognition threshold is lower than the current recognition threshold in U.S. GAAP, resulting in the potential for an earlier income statement recognition of costs associated with litigation (footnote omitted). Concerns have been raised about an auditor's ability to corroborate the information furnished by management related to litigation, claims, and assessments by obtaining an audit inquiry letter from a client's attorney."[166]

Notwithstanding the above examples of areas where PCAOB auditing standards may require better alignment with IFRS, most auditors that responded to the Proposed Roadmap did not have concerns regarding their ability to opine on financial statements prepared under IFRS.[167]

The Staff will analyze for the Commission's benefit the effects on audit standard setting and auditor requirements, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Consider the impact of such incorporation on PCAOB standards.
- Consider the extent of, logistics for, and estimated time necessary to undertake any changes to the auditing standards.

G. Broker-Dealer and Investment Company Reporting

The Proposed Roadmap excluded investment companies registered under the Investment Company Act of 1940 and certain other regulated entities that are required to file or furnish certain types of financial reports (*e.g.,* broker-dealers).

Some commenters expressed that no issuers should be exempt from the scope of the Proposed Roadmap[168] and that the final Roadmap should include a plan so that all filings with the SEC are based on IFRS and allow adequate time for the IASB and SEC to consider the appropriate financial reporting model for these entities.[169]

Alternatively, some commenters supported the exclusion of investment companies from the rule proposal.[170] Another commenter expressed the view that the Commission has not sufficiently articulated its rationale for excluding investment companies and other regulated entities from the scope of the Proposed Roadmap and would agree with excluding these issuers "only if there are unique considerations surrounding these entities that could delay the Commission's decision making process."[171]

Finally, commenters also expressed concerns regarding costs imposed by the reduced comparability introduced by the continued use of another basis of accounting (*e.g.,* for private companies (see below), and/or Investment Company Act registrants).[172] As another example, excluding broker-dealer reporting could result in a broker-dealer subsidiary being required to report to the Commission under one set of standards with the public holding company that consolidates that subsidiary required to report under another. Also, to the extent reporting results changed if IFRS were to be incorporated for these entities, such a change could impact compliance with financial responsibility rules, such as net capital requirements.

In light of the different views noted above, the Staff will analyze for the Commission's benefit possible approaches for financial reporting requirements for broker-dealers and investment companies, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Assess the effects of such incorporation on broker-dealers, investment companies, and investors, including whether IFRS includes sufficient standards, and the extent of, logistics for, and estimated time necessary to undertake any changes, should broker-dealers and investment companies be included in the scope any potential Commission decision.
- Evaluate the effect on investors of excluding broker-dealers and investment companies from the scope of any potential Commission decision.

H. Public Versus Private Companies

The Proposed Roadmap focused only on companies that file with the Commission. However, existing U.S. GAAP also is used by private companies.

Commenters expressed concern over the impact a move to IFRS would have on U.S.

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[162] *See* Section 101 of the Sarbanes-Oxley Act (15 U.S.C. 7211).

[163] *See, e.g.,* CalPERS and FEE.

[164] *See* AAA–FASC.

[165] *See, e.g.,* KPMG.

[166] As further discussed in the Proposed Roadmap:

Some believe that changes to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information may be necessary. *See* AU section 337C. The Statement of Policy, commonly referred to as the "Treaty," recognizes the professional responsibilities of attorneys and auditors and seeks to preserve confidentiality while providing the necessary level of assurance for the audit. The Treaty recognizes that the confidentiality of communications between an attorney and a client may be impaired by the disclosure of the substance of such communications to third parties, including auditors. By describing thresholds for disclosure and limitations on responses, the Treaty sets the scope of the attorney's responses to audit requests for information on legal matters. Some believe that the thresholds and limitations described in the Treaty are inconsistent with certain provisions within IFRS.

See also, e.g., ABA Committee (echoed the Commission's statements in the Proposed Roadmap regarding the audit of legal contingencies).

[167] *See, e.g.,* CAQ (stated that the U.S. auditing profession stands ready to support the use of IFRS by all U.S. issuers, including early adopters under an option), J.H. Cohn LLP (confirmed its readiness to prepare for audits of IFRS financial statements once the SEC reaches a decision), and PwC.

[168] *See, e.g.,* BDO Seidman, LLP ("BDO"), CAQ, and Verizon Communications, Inc.

[169] *See, e.g.,* EY.

[170] *See, e.g.,* AICPA and Investment Company Institute (who expressed that convergence in accounting standards as applied to investment companies and resolution of conflicts between IFRS and Article 6 of Regulation S–X should be prerequisites to a move to IFRS).

[171] GT.

[172] *See, e.g.,* Private Equity Council.

private companies.[173] One concern raised in the Proposed Roadmap and echoed by commenters was that, to the extent two sets of standards existed, a requirement to file different financial statements with the Commission would increase costs of capital for private companies considering an initial public offering.[174] It could also impact the evaluation of business combinations between public and private companies. Some commenters acknowledged that private company reporting is largely outside of the mandate of the Commission, but stated that the Commission should assess the consequences its decision on IFRS would have to this large and important part of the U.S. economy. Specifically, certain of these commenters believed that if a "dual-GAAP" system emerged for private versus public companies, this could adversely affect the efficiency of the U.S. capital markets.[175] Even if U.S. private companies were to report under IFRS, a "dual-GAAP" system may evolve, if private companies followed IFRS for small- and medium-sized entities ("SMEs"), which:

"[I]s a self-contained standard of about 230 pages tailored for the needs and capabilities of smaller [private] businesses. Many of the principles in full IFRSs for recognising and measuring assets, liabilities, income and expenses have been simplified, topics not relevant to SMEs have been omitted, and the number of required disclosures has been significantly reduced. To further reduce the reporting burden for SMEs revisions to the IFRS will be limited to once every three years." [176]

The Staff will analyze for the Commission's benefit the effects on U.S. private companies, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze the effects of such incorporation for U.S. issuers on private companies, auditors, and investors.
- Assess the extent of, logistics for, and estimated time necessary to undertake changes to accommodate any resulting implications on private companies.

V. Impact on Issuers

A. Introduction

Incorporation of IFRS into the financial reporting system for U.S. issuers would significantly affect preparers of financial statements—the several thousand issuers that file reports with the Commission. Numerous commenters expressed the view that the costs, effort, and time involved with a move to IFRS would be considerable,[177] with many asserting that the benefits of such a move may not outweigh those costs.[178] A number of commenters further asserted that the transition time articulated in the Proposed Roadmap was not sufficient [179] and may cause confusion, thereby damaging investor confidence.[180]

Accordingly, this aspect of the Work Plan explores the magnitude and logistics of changes that issuers would need to undertake to effectively incorporate IFRS into the financial reporting system for U.S. issuers, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers in the following areas:[181]

- Accounting systems, controls, and procedures;
- Contractual arrangements; and
- Corporate governance.

The Work Plan will also consider the effect of such incorporation on the following:

- Accounting for litigation contingencies; and
- Smaller issuers versus larger issuers.

B. Accounting Systems, Controls, and Procedures

U.S. issuers may be required to significantly modify their accounting systems, controls, and procedures, if the Commission incorporates IFRS into the financial reporting system. As stated in the Proposed Roadmap:

"Use of any new accounting standards requires changes to financial reporting systems and procedures to identify, collect, analyze and report financial information and the corresponding controls. Changing numerous accounting standards at the same time, regardless of the starting point, would require numerous changes in a company's policies and procedures and system of internal controls."

For example, commenters expressed the need for:

- A complete survey of accounting policies as a first step because IFRS explicitly requires that all similar transactions in the enterprise (including affiliates) be accounted for similarly;[182]
- More detailed company policies, as IFRS is viewed as less developed than U.S. GAAP;[183] and
- Changes to systems, including ledgers and related internal controls, and related testing of such changes,[184] particularly to ensure effectiveness for reporting purposes under section 404 of the Sarbanes-Oxley Act.

Commenters noted that the burden of changes to accounting systems, controls, and procedures would be exacerbated in a number of ways. First, issuers may be required to maintain dual-accounting systems for a period of time (*e.g.,* (1) for periods reported under existing U.S. GAAP after the opening balance sheet date under IFRS 1, *First-time Adoption of International Financial Reporting Standards,* but before the initial filing under a system incorporating IFRS, (2) if the SEC were to require supplemental U.S. GAAP information for a period of time to aid in transition, (3) if such incorporation were effective in the financial statements of consolidated entities prior to those of the consolidated entities' stand-alone subsidiaries, and (4) if other regulators continued to require reporting based on U.S. GAAP). One commenter stated:

"Maintaining dual reporting presents U.S. issuers with a significant burden since all of the processes, controls, and checks must occur twice for each transaction. Indeed, it is likely that the Sarbanes Oxley control testing requirements could nearly double during the period of parallel reporting." [185]

Second, changes to accounting systems, controls, and procedures require sufficient lead time. However, if IFRS continues to change at a rapid pace during this lead time, U.S. issuers will experience additional challenges in planning for incorporation of IFRS into the financial reporting system. As such, some commenters expressed the need for a "stable platform" for a period of time during which accounting standards do not change.[186] However, a "stable platform" may constrain the standard setters' ability to address emerging issues.

Third, some commenters asserted that certain industries would be disproportionately impacted by incorporation of IFRS into the financial reporting system for U.S. issuers because of differences between existing U.S. GAAP and IFRS that are specific to their circumstances. One commenter stated that financial institutions will need sufficient time to prepare for conversion to IFRS, given the extent of systems changes and communications that will need to occur.[187] Other commenters expressed concerns about specific differences between U.S. GAAP and IFRS for which they believed the accounting under IFRS would be onerous.[188]

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[173] *See, e.g.,* The New York State Society of Certified Public Accountants ("NY CPAs") and Ohio CPAs.

[174] *See, e.g.,* ABA Committee, Center for Capital Markets Competitiveness ("CCMC"), Davey Tree, First Data, and ITAC.

[175] *See, e.g.,* CA CPAs and CIGNA Corporation.

[176] "IASB publishes IFRS for SMEs," IASB press release (July 9, 2009). (available at: *http://www.iasb.org/News/Press+Releases/IASB+publishes+IFRS+for+SMEs.htm*)

[177] *See, e.g.,* Phil Ameen ("Ameen"), Chevron Corporation, Eli Lilly, Shawn S. Fahrer, Hot Topic Inc. ("Hot Topic"), Intel, Graduating Seniors—Jacksonville University (Georgia), Kohl's Department Stores, Inc. ("Kohl's"), Molson Coors Brewing Company, NARUC, PPL, Psoras, Mark A. Supin, SIFMA, U.S. Congressman Lee Terry, Tuesday Morning; and U.S. Congressman Zach Wamp.

[178] *See, e.g.,* Davey Tree, Exxon Mobil Corporation ("Exxon Mobil"), Marriott, McDonald's, Pfizer Inc. ("Pfizer"), Plantronics, Inc. ("Plantronics"), Regions Financial Corp., and tw telecom.

[179] *See, e.g.,* ABA Committee, American Insurance Association ("AIA"), AICPA, BankReg, Best Buy Co., Inc., CAQ, Cisco, Cymer Inc., Deloitte, EY, Fannie Mae, Graybar Electric Company, Inc., ICAEW, IMA, KPMG, National Association of Real Estate Investment Trusts, NARUC, Progress Energy, Inc., PwC, Reznick Group, P.C., TransCanada Corporation, and XenoPort.

[180] *See, e.g.,* Association of the Bar of the City of New York, Community Health, CSX Corporation, and Plantronics.

[181] The human resource impact on issuers is discussed separately in section VI.

[182] *See, e.g.,* Ameen.

[183] *See, e.g.,* Air Products, Community Health, Darden, and Mead Westvaco.

[184] *See, e.g.,* Ameen.

[185] UTC.

[186] *See, e.g.,* Eli Lilly, Exxon Mobil, EY, and SIFMA.

[187] *See* ICAEW.

[188] *See, e.g.,* Mead Westvaco, Plum Creek Timber Company, Inc., Potlatch Corporation, and Rayonier Inc. (who expressed concerns regarding the costs of complying with the requirement in International

The Staff will analyze for the Commission's benefit the effects on U.S. issuers' accounting systems, controls, and procedures, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Determine the extent of, logistics for, and estimated time necessary to undertake changes to issuer accounting systems, controls, and procedures to facilitate such incorporation.
- Consider the implications of a "stable platform," including the length of time and means of addressing emerging issues.

C. Contractual Arrangements

The Proposed Roadmap also noted that companies' contracts often, either explicitly or implicitly, require the use of U.S. GAAP or are based off of current U.S. GAAP reporting. For example, companies may have issued debt instruments which include financial covenants based on U.S. GAAP or require periodic reporting of financial statements prepared under U.S. GAAP. Similarly, lease contracts and employee compensation plans may be based on metrics computed using U.S. GAAP financial information.

Commenters indicated that a move to IFRS for U.S. issuers may require contract renegotiation or the preparation of two sets of financial statements, depending on how IFRS is incorporated in the U.S. capital markets.[189] In addition, performance under the existing agreements could be affected if the reported information changes. Accordingly, the Staff will analyze for the Commission's benefit the effects on contractual arrangements, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Assess the types and pervasiveness of contractual arrangements that would be affected by such incorporation and the manner in which they would be affected.
- Determine the costs, ability, plans, and estimated time required to address concerns regarding affected contractual arrangements.

D. Corporate Governance

Incorporation of IFRS into the financial reporting system for U.S. issuers may affect an issuer's compliance with corporate governance requirements. For example, in 2003, as required by the Sarbanes-Oxley Act, the SEC adopted rules that require a registrant to disclose whether it has at least one "audit committee financial expert" (as defined) serving on its audit committee and, if so, the name of the expert and whether the expert is independent of management.[190] Those rules also indicate the education and experience through which those attributes must have been acquired.

Listing rules for U.S. securities exchanges also have requirements regarding audit committee competence. One commenter explained:

"[R]ules of the NYSE, NASDAQ, and AMEX require members of the audit committee of each listed company to be financially literate and each listed company audit committee must have at least one member who has accounting or related financial management expertise. Many board members who currently meet the "financial expertise" qualifications are not likely to have had experience with IFRS or its adoption as they have been trained in U.S. GAAP. If a company adopts IFRS, its board is likely to need additional training in IFRS in order to meet the level of financial expertise necessary for them to carry out these functions and satisfy these requirements."[191]

Accordingly, incorporation of IFRS into the financial reporting system may result in challenges for U.S. issuers in identifying audit committee financial experts and in listing on securities exchanges, as well as, more broadly, compliance with other aspects of corporate governance. Further, similar to the potential effects on compliance with other regulatory requirements, changes in financial reporting could impact a company's compliance with certain quantitative listing standards. The Staff will analyze for the Commission's benefit the impact on compliance with corporate governance standards, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Determine the potential effects on corporate governance and related concerns of such incorporation.
- Determine possible approaches to address corporate governance concerns and the extent of, logistics for, and estimated time necessary to undertake these approaches.

E. Accounting for Litigation Contingencies

Commenters expressed concerns regarding the treatment of litigation-related loss contingencies under IFRS. For example, the ABA Committee asserted that accounting for such contingencies under IFRS raises serious concerns by its use of a lower recognition threshold than U.S. GAAP and its requirements to make additional disclosures. Their concerns included "avoidance of prejudice to companies and their shareholders in our highly litigious society" and erosions of the protections of attorney-client privilege and work product. Other commenters expressed similar concerns, with one noting:

"[T]he loss contingency disclosures required under IFRS are similar to those proposed by the FASB in 2008. As these disclosures were rejected for use in the U.S. primarily due to objections from the legal community, it is likely that similar issues will arise if IFRS becomes mandatory."[192]

Incorporation of IFRS into the financial reporting system for U.S. issuers requires careful consideration of the impact of litigation contingency accounting and disclosure requirements under IFRS on issuers and investors. Accordingly, the Staff will analyze for the Commission's benefit the effects on accounting and disclosure requirements for litigation contingencies under IFRS in the U.S. legal environment, should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Discuss with issuers, the legal profession, and investors concerns regarding accounting and disclosure requirements for litigation contingencies under IFRS.
- Determine possible approaches to address concerns regarding accounting and disclosure requirements for litigation contingencies under IFRS and the extent of, logistics for, and estimated time necessary to undertake these approaches.

F. Smaller Issuers Versus Larger Issuers

Several commenters asserted that a move to IFRS would be particularly burdensome for smaller U.S. issuers. For example, one commenter included studies from two independent consultants indicating that, while recognizing potential cost savings for some large, multinational firms, a move to IFRS is likely to impose substantial transition costs, including disproportionate costs on smaller issuers.[193] Conversely, one commenter stated that "the impact is expected to be very small and the majority of the impact will occur in non-routine or one-off transactions which are typically subject to significant scrutiny in any case."[194]

In light of the above comments, the Staff will analyze for the Commission's benefit the extent to which incorporation of IFRS into the financial reporting system for U.S. issuers would affect smaller issuers differently than larger issuers and the extent of, logistics for, and estimated time necessary to undertake any changes, should the Commission determine in the future to do so. Specifically, the Staff will:

- Determine the manner in which the impact of such incorporation varies based on issuer size.
- Determine possible approaches to mitigate concerns regarding any disproportionate effects on smaller issuers of such incorporation and the extent of, logistics for, and estimated time necessary to undertake these approaches.

VI. Human Capital Readiness

A. Introduction

Should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers, transitional

Accounting Standard 41, *Agriculture,* to fair value timberlands). *See also, e.g.,* Hot Topic, J.C. Penney Company, Inc., Kohl's, and Tuesday Morning (who expressed concerns about the IFRS disallowance of the retail inventory method).

[189] *See, e.g.,* AIA, CCMC, Hot Topic, JP Morgan, Psoras, and Tuesday Morning.

[190] *See Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002,* Release No. 33–8177 (January 23, 2003) [68 FR 5110 (January 31, 2003)].

[191] Metlife.

[192] Dominion. *See also, e.g.,* FPL and Pfizer. The Staff notes that the FASB is in the process of re-deliberating loss contingency disclosure requirements. *See also* section IV.E regarding concerns related to the auditing of loss contingencies accounted for under IFRS.

[193] FAF. *See also, e.g.,* Biotechnology Industry Organization, Business Roundtable, CCMC, CRIFR, and IMA.

[194] Xenoport.

considerations related to the readiness of all parties involved in the financial reporting process, including investors (see section III for further discussion), issuers, attorneys, auditors, regulators, and educators require evaluation to assess the magnitude and logistics of changes that would be necessary to effectively incorporate IFRS into the financial reporting system for U.S. issuers. Accordingly, this section explores considerations related to:

- Education and training; and
- Auditor capacity.

B. Education and Training

In the Proposed Roadmap, the Commission noted that the education and ongoing training of most accountants in the United States are limited to or predominantly focused on the current provisions of U.S. GAAP. As a result, the Commission acknowledged that many parties likely would need comprehensive IFRS training, including:

- Investors, as discussed in section III;
- The personnel of issuers, including their accounting, internal audit, and investor relations departments, and their governing bodies, such as their audit committees and board of directors;
- Specialists, such as actuaries and valuation experts, as they often are engaged by management to assist in measuring certain assets and liabilities for financial reporting purposes;
- Attorneys, who will need to understand financial statements in order to, for example, advise on disclosures required under the securities laws and provide legal representations to external auditors;
- External auditors;
- Regulators, such as the Staff, PCAOB staff, and the staff of other regulatory bodies; [195]
- State licensing bodies, professional associations, and industry groups, who would need to integrate IFRS into their training materials, publications, testing, and certification programs (including the Uniform CPA Examination); and
- Colleges and universities that would need to include IFRS in their curricula.

In the Proposed Roadmap, the Commission observed that strategies taken by those participants in markets where issuers already report in accordance with IFRS might serve as examples of approaches to increasing education and awareness of IFRS.

The Commission also expressed that the private sector may respond to any increased demand for IFRS education by making educational materials available.[196] Since the Commission's issuance of the Concept Release in August 2007, several of the largest accounting firms in the United States have made more material available to the public about IFRS generally, as well as about the application of specific IFRS standards.[197]

Commenters expressed mixed views in terms of the importance of this issue, as well as timing for improvements in this area. Some commenters expressed concerns about the challenges faced in training and educating both existing and future practitioners.[198] For example, the nature of accounting education would require change, as professionals and students would not only need training in IFRS, but in utilizing judgment in the application of less prescriptive standards and in understanding the economic substance of transactions.[199] Accordingly, commenters expressed the view that a move to IFRS for U.S. issuers would be costly for educators,[200] particularly if a dual-reporting system (*e.g.,* due to different systems for public versus private companies) evolved in the United States.[201] Commenters also asserted that educators would not be ready in the near term [202] and that work needs to begin immediately.[203] As such, some commenters recommended that the Commission address how sufficient resources and incentives for training would be achieved.[204]

Others, however, were of the view that educators, issuers, and other impacted parties would be prepared in time, particularly once a date for moving to IFRS were established.[205] One commenter expressed that IFRS education and expertise will grow in the United States anyway—even if the United States does not move to IFRS—because of the ongoing increased foreign investment in the United States.[206]

The Staff recognizes that education and training efforts to facilitate incorporation of IFRS into the financial reporting system for U.S. issuers could be significant. Accordingly, the Staff will analyze for the Commission's benefit the sufficiency of the IFRS education and training infrastructure and the extent of, logistics for, and estimated time necessary to undertake changes, should the Commission determine in the future to do so. Specifically, the Staff will:

- Evaluate the current level of IFRS expertise and extent of IFRS education and training needs among constituents.
- Consider the extent of, logistics for, and estimated time to implement plans for future training among constituents.

C. Auditor Capacity

Incorporation of IFRS into the financial reporting system for U.S. issuers could strain audit firm resources if sufficient training and time are not provided. The Proposed Roadmap noted that "[a]udit firms would need to consider elements of their systems of quality control, such as their practices related to hiring, assigning personnel to engagements, professional development and advancement activities." An increase in the demand for IFRS expertise may affect the availability of audit services, with consequences on audit quality, cost, and audit firm concentration.

While some commenters expressed that moving to IFRS is likely to have little or no effect on the availability of audit services and audit quality,[207] others expressed concerns about a likely reduction in these areas, along with an increase in both internal and external audit costs, due to IFRS being less comprehensive and requiring more application of judgment.[208] For additional discussion regarding the impact of IFRS's comprehensiveness on its auditability, see section I.C.

Others commented that the consequences of a move to IFRS for U.S. issuers on audit firms may differ based on audit firm size. With respect to the large audit firms, commenters believed that a move to IFRS for U.S. issuers is likely to have little or no effect on the availability of audit services and audit quality.[209] Two large audit-firm commenters noted that they currently audit foreign private issuers as well as subsidiaries of foreign multi-nationals that report under IFRS.[210] Further, they anticipated leveraging personnel from other member firms in countries that have already moved to IFRS.

On the other hand, opinions were mixed on the impact of moving to IFRS on "smaller" audit firms. The Proposed Roadmap stated that the potential use of IFRS by U.S. issuers: "[M]ay be particularly challenging for less globally-oriented audit firms, which typically may have fewer resources available through affiliated or network firms located in jurisdictions in which issuers already report in accordance with IFRS. This could be a further factor affecting concentration in the auditing profession."

One commenter expressed concern that current IFRS expertise is concentrated within the "Big Four" public accounting firms, which could allow for opportunistic business behaviors when dealing with other competitors and regulators.[211] However, others commented that an SEC mandate to move to IFRS would not affect the competitive position of smaller firms.[212]

In light of these differing views, the Staff will analyze for the Commission's benefit potential auditor capacity constraints with respect to IFRS and their consequences,

[195] *See, e.g.,* BankReg (noted that they "collectively employ thousands of examination and policy support personnel that will need to be adequately trained in the use of IFRS if it is adopted before convergence is achieved").

[196] *See* Proposed Roadmap.

[197] These materials include publications (*e.g.,* PwC's *IFRS and US GAAP: similarities and differences;* EY's *US GAAP* v. *IFRS The basics: Oil and gas*) and other IFRS-related education initiatives (*e.g.,* the KPMG IFRS Institute; Deloitte's IFRS University Consortium; EY's Academic Resource Center; PwC's IFRS Video Learning Center).

[198] *See, e.g.,* CalPERS, CFA, Fund Stockowner Rights, ITAC, NASBA, NYCPAs, and Ohio CPAs.

[199] *See, e.g.,* London Ctr Int'l Corp Gov Law and Shyam Sunder.

[200] *See, e.g.,* AmerisourceBergen Corporation, Teresa P. Gordon, and Thomas N. Tyson.

[201] *See, e.g.,* Travelers.

[202] *See, e.g.,* American Accounting Association, Financial Accounting and Reporting Section, and Financial Reporting Policy Committee (pointed to surveys of educators indicating concerns over readiness).

[203] *See, e.g.,* ING Insurance Americas.

[204] *See, e.g.,* CalPERS and ICGN.

[205] *See, e.g.,* ACCA, Alcoa, CAQ, Dell Inc., EY, and PwC.

[206] *See* Pepsi.

[207] *See, e.g.,* Deutsche Bank, UBS, and UTC.

[208] *See, e.g.,* Davey Tree.

[209] *See, e.g.,* BDO, Deloitte, EY, and PwC.

[210] *See* Deloitte and PwC.

[211] *See* ITAC.

[212] *See, e.g.,* ACCA, Deloitte, EY, ICAEW (indicated that a move to IFRS did not have an identifiable impact on audit concentration in Europe), and PwC.

should the Commission determine in the future to incorporate IFRS into the financial reporting system for U.S. issuers. Specifically, the Staff will:

- Analyze concerns regarding auditor capacity constraints, including the effect on audit quality, cost, and audit firm concentration and competitiveness.
- Determine possible approaches to mitigate these concerns and the extent of, logistics for, and estimated time necessary to undertake these approaches.

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