AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

2–11–09 Wednesday
Vol. 74 No. 27 Feb. 11, 2009

Pages 6823–6988

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 528

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Bc6 Recombinant Deoxyribonucleic Acid Construct

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the original approval of a new animal drug application (NADA) filed by GTC Biotherapeutics, Inc. The NADA provides for use of a recombinant deoxyribonucleic acid (rDNA) construct in a lineage of genetically engineered (GE) goats expressing recombinant human antithrombin in their milk. The subsequently purified antithrombin is a biological product for human therapeutic use. In a separate action, a biologics license application (BLA) has been approved by FDA for use of this antithrombin in humans.

DATES: This rule is effective February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Larisa Rudenko, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8247, e-mail: *larisa.rudenko@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: GTC Biotherapeutics, Inc., 175 Crossing Blvd., Framingham, MA 01702, filed NADA 141–294 that provides for use of an rDNA construct in a lineage of GE goats expressing recombinant human antithrombin in their milk. The subsequently purified antithrombin is a biological product for human therapeutic use. In a separate action, a BLA has been approved by FDA for use of this antithrombin in humans. The NADA is approved as of February 6, 2009, and the regulations are amended by adding 21 CFR part 528 to reflect the approval.

In addition, GTC Biotherapeutics, Inc., is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this sponsor.

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

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (address above) between 9 a.m. and 4 p.m., Monday through Friday.

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

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 528

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 chapter I is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''GTC Biotherapeutics, Inc.''; and in the table in paragraph (c)(2), numerically add an entry for ''042976'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
GTC Biotherapeutics, Inc., 175 Crossing Blvd., Framingham, MA 01702	042976
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
042976	GTC Biotherapeutics, Inc., 175 Crossing Blvd., Framingham, MA 01702
* * * * *	

■ 3. Add part 528 to read as follows:

PART 528—NEW ANIMAL DRUGS IN GENETICALLY ENGINEERED ANIMALS

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

§ 528.1070 Bc6 recombinant deoxyribonucleic acid construct.

(a) *Specifications and indications for use.* Five copies of a human Bc6 recombinant deoxyribonucleic acid (rDNA) construct located at the GTC 155–92 site in a specific hemizygous diploid line of dairy breeds of domestic goats (*Capra aegagrus hircus*) directing the expression of the human gene for antithrombin (which is intended for the treatment of humans) in the mammary

gland of goats derived from lineage progenitor 155–92.

(b) *Sponsor*. See No. 042976 in § 510.600 of this chapter.

(c) *Limitations*. Food or feed from GTC–155–92 goats is not permitted in the food or feed supply.

Dated: February 6, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–2881 Filed 2–6–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9444]

RIN 1545–BI42

Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under sections 367(a), 367(b) and 1248(a) of the Internal Revenue Code (Code). The final regulations under section 367 revise existing final regulations and add cross-references. The final regulations under section 1248 update an effective/applicability date. The temporary regulations under section 367(a) and (b) revise existing final regulations concerning transfers of stock to a foreign corporation that are described in section 351 by reason of section 304(a)(1). The temporary regulations under section 1248(a) provide that, for purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation. The temporary regulations affect certain persons that transfer stock to a foreign corporation in a transaction described in section 304(a)(1), or certain persons that recognize gain under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock. The text of the temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on February 11, 2009.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 367(a)(1) generally provides that if a United States person transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 356, or 361, the foreign corporation shall not be considered a corporation for purposes of determining the extent to which the United States person recognizes gain on such transfer. Exceptions to the general rule are provided by section 367(a)(2) and (3), and the Secretary has broad authority under section 367(a)(6) to promulgate regulations providing exceptions for other transactions.

Section 367(b)(1) provides that in the case of an exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. Section 367(b)(2) provides that the regulations prescribed pursuant to section 367(b)(1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing the circumstances under which gain is recognized, amounts are included in gross income as a dividend, adjustments are made to earnings and profits, or adjustments are made to the basis of stock or securities.

Regulations under section 367(b) generally provide that if the potential application of section 1248 cannot be preserved immediately following the acquisition of the stock or assets of a foreign corporation (foreign acquired corporation) by another foreign corporation in an exchange subject to section 367(b), then certain exchanging shareholders of the foreign acquired corporation must include in income as a dividend the section 1248 amount (as defined in § 1.367(b)–2(c)) attributable to the stock of the foreign acquired corporation. See § 1.367(b)–4(b).

Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (the acquiring corporation) acquires stock in the other corporation (the issuing corporation) from the person (or persons) so in control, then such property shall be treated as a distribution in redemption of the stock of the acquiring corporation. To the extent section 301 applies to the distribution, the transferor and the acquiring corporation are treated as if (1) the transferor transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is deemed to have issued. Under section 304(b)(2), the determination of the amount of the property distribution that is a dividend (and the source thereof) is made as if the property is distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits.

On February 21, 2006, the IRS and Treasury Department issued final regulations (TD 9250) providing that section 367(a) and (b) shall not apply to certain transfers of stock of a foreign or domestic corporation to a foreign acquiring corporation to which section 351 applies (deemed section 351 exchange) by reason of section 304(a)(1) (final 2006 regulations). Specifically, § 1.367(a)–3(a) provides that if, pursuant to section 304(a)(1), a United States person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). Similarly, § 1.367(b)–4(a) provides that if, pursuant to section 304(a)(1), a foreign corporation is treated as acquiring the stock of another foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not an acquisition subject to section 367(b).

The preamble to the final 2006 regulations explained that the IRS and Treasury Department determined that the policies underlying section 367(a) and (b) are preserved even if a deemed section 351 exchange is not subject to section 367(a) and (b) because generally the income recognized by the transferor in the transaction (dividend income,

capital gain, or both) should equal or exceed the built-in gain in the transferred stock. Comments were received, however, stating that the transferor may not recognize income equal to or greater than the built-in gain in the transferred stock if, under section 301(c)(2), the transferor were permitted to recover the basis of shares of the foreign acquiring corporation held before (and after) the transaction. For example, assume a domestic corporation, P, wholly owns F1 and F2, both foreign corporations. The F1 stock has a $0x basis and $100x fair market value. The F2 stock has a $100x basis and $100x fair market value. Neither F1 nor F2 has current or accumulated earnings and profits. In a transaction subject to section 304(a)(1), P sells the F1 stock to F2 for $100x cash. Under section 304(a)(1), P and F2 are treated as if P transferred the F1 stock to F2 in exchange for F2 stock in a transaction to which section 351 applies, and then F2 redeemed its stock deemed issued to P. Because the redemption of the F2 stock would be described in section 302(d) and therefore subject to section 301, the commentators posited that P may not recognize gain under section 301(c)(3) on the receipt of the $100x cash in redemption of the F2 stock if the basis of both the F2 stock that is received by P in the deemed section 351 exchange ($0x), and of the F2 stock held by P prior to (and after) the transaction ($100x), is available for reduction under section 301(c)(2). If that were the case, P would recognize no gain in the transaction.

The preamble to the final 2006 regulations stated, however, that the IRS and Treasury Department believe current law does not provide for the recovery of basis of any shares of the acquiring corporation other than the shares deemed issued to the transferor and redeemed by the acquiring corporation as provided under section 304(a)(1). Thus, in the example above, P would recognize $100x gain under section 301(c)(3) (the built-in gain on the F1 stock), and the basis of the F2 stock held by P after the transaction would continue to be $100x. The IRS and Treasury Department continue to study the basis recovery issue as part of a larger project and have determined that it is necessary to revise the final 2006 regulations prior to the completion of that project.

Explanation of Provisions

A. Modified Application of Section 367(a) to Deemed Section 351 Exchanges

Consistent with the final 2006 regulations, the temporary regulations under section 367(a) generally provide that if, pursuant to section 304(a)(1), a United States person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). However, if the distribution received by the United States person in redemption of the foreign acquiring corporation stock received in the deemed section 351 exchange is subject to section 301 (by reason of section 302(d)), the temporary regulations provide an exception to the general rule if the distribution is applied against and reduces (in whole or in part), pursuant to section 301(c)(2), the basis of stock of the foreign acquiring corporation held by the United States person other than the stock deemed issued to the United States person in the deemed section 351 exchange. In such a case, the United States person shall recognize gain under section 367(a)(1) equal to the amount by which the gain realized by the United States person with respect to the transferred stock in the deemed section 351 exchange exceeds the amount of the distribution received by the United States person in redemption of the foreign acquiring corporation stock that is treated as a dividend under section 301(c)(1) and included in gross income by the United States person. Thus, in the hypothetical transaction described above, if any amount of the distribution received by P in redemption of the F2 stock was applied against the basis of the F2 stock held by P before (and after) the transaction, then under the temporary regulations P would recognized $100x gain under section 367(a)(1) in connection with its transfer of the F1 stock to F2 in the deemed section 351 exchange.

The exceptions to the application of section 367(a)(1) for transfers of stock provided in § 1.367(a)–3 are not available to transfers covered by the temporary regulations. For example, a United States person cannot avoid gain recognition under the temporary regulations by entering into a gain recognition agreement under §§ 1.367(a)–3(b)(1)(ii) and 1.367(a)–8 with respect to the deemed section 351 exchange.

The temporary regulations provide rules to coordinate the recognition of gain under the temporary regulations and the corresponding increase to the basis of the stock of the foreign acquiring corporation received by the United States person in the transaction. Under such rules the increase to the basis of the stock of the foreign acquiring corporation by reason of gain recognized by the United States person under the temporary regulations would be taken into account before determining the consequences of the redemption of the shares of the foreign acquiring corporation. For example, in the hypothetical transaction described above, the basis of the F2 stock deemed received by P in exchange for the F1 stock would be increased to $100x under section 358 before determining the consequences of the redemption of such stock under section 301. The gain recognized by P will be treated as recognized with respect to the F1 stock transferred in the deemed section 351 exchange in proportion to the gain realized with respect to the F1 stock.

B. Modified Application of Section 367(b) to Deemed Section 351 Exchanges

The temporary regulations make similar revisions to the final 2006 regulations under section 367(b). Specifically, the temporary regulations provide that § 1.367(b)–4(b) shall apply to a deemed section 351 exchange to the extent the distribution received by the exchanging shareholder in redemption of the stock deemed issued by the foreign acquiring corporation is applied against and reduces, pursuant to section 301(c)(2), the adjusted basis of stock of the foreign acquiring corporation held by the exchanging shareholder before the transaction.

The temporary regulations provide rules to determine the amount of an income inclusion that is attributable to the shares of stock of the foreign acquired corporation transferred in the deemed section 351 exchange when the income inclusion required under the regulations is less than the aggregate section 1248 amount attributable to all of the shares of stock transferred in the deemed section 351 exchange.

C. Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248(a)

The temporary regulations under section 1248(a) provide that gain recognized under section 301(c)(3) on the receipt of a distribution of property from a foreign corporation shall be treated, for purposes of section 1248(a), as gain from the sale or exchange of the

stock of such corporation. The temporary regulations preserve the policies underlying section 367(b), are consistent with the premise of the final 2006 regulations, and ensure that the earnings and profits of lower-tier foreign subsidiaries described in section 1248(c)(2) are taken into account.

D. Effective Dates

The temporary regulations apply to transfers or distributions occurring on or after February 11, 2009.

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary and final regulations are necessary to ensure that the appropriate amount of income (dividend income, capital gain or both) is recognized currently in the transactions described in the explanation of provisions section in this preamble. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph. 1.** The authority citation for part 1 is amended by adding new entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(a)–9T also issued under 26 U.S.C. 367(a) and (b). * * *

Section 1.367(b)–4T also issued under 26 U.S.C. 367(b). * * *

■ **Par. 2.** Section 1.367(a)–3 is amended by revising the third sentence in paragraph (a) to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) * * * For rules applicable when, pursuant to section 304(a)(1), a United States person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, see § 1.367(a)–9T. * * *

* * * * *

■ **Par. 3.** Section 1.367(a)–9T is added to read as follows:

§ 1.367(a)–9T Treatment of deemed section 351 exchanges pursuant to section 304(a)(1) (temporary).

(a) *Scope and general rule.* This section applies to the extent that, pursuant to section 304(a)(1), a United States person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation (foreign acquiring corporation) in exchange for stock of the foreign acquiring corporation in a transaction to which section 351(a) applies (deemed section 351 exchange). Except to the extent provided in paragraph (b) of this section, a transfer of stock by a United States person to a foreign acquiring corporation in a deemed section 351 exchange is not subject to section 367(a)(1).

(b) *Special rule.* Notwithstanding paragraph (a) of this section, if the distribution received by the United States person in redemption of the stock of the foreign acquiring corporation deemed issued in the deemed section 351 exchange is applied against and reduces (in whole or in part), pursuant to section 301(c)(2), the basis of stock of the foreign acquiring corporation held by the United States person other than the stock deemed issued in the deemed section 351 exchange, the United States person shall recognize gain pursuant to this paragraph (b). The exceptions described in § 1.367(a)–3(b)(1) and (c)(1) shall not apply to a transfer of stock described in paragraph (a) of this section. The amount of gain recognized by a United States person pursuant to this paragraph (b) shall equal the amount, if any, by which—

(1) The gain realized by the United States person with respect to the transferred stock in connection with the deemed section 351 exchange exceeds; and

(2) The amount of the distribution received by the United States person in redemption of the stock of the foreign acquiring corporation deemed issued in the deemed section 351 exchange that is treated as a dividend under section 301(c)(1) and included in gross income by the United States person.

(c) *Ordering rule.* For purposes of paragraph (b)(1) of this section, the amount of gain realized by the United States person in connection with the deemed section 351 exchange shall be determined without regard to the amount of gain recognized by the United States person under paragraph (b) of this section.

(d) *Allocation of recognized gain.* Gain recognized by a United States person pursuant to paragraph (b) of this section shall be treated as recognized with respect to the stock transferred in the deemed section 351 exchange in proportion to the amount of gain realized by the United States person with respect to such stock. See § 1.367(a)–1T(b)(4) for additional rules on the character, source, and adjustments relating to gain recognized under section 367(a).

(e) *Example.* The following example illustrates the rules of this section:

Example. (i) *Facts.* (A) USP, a domestic corporation, wholly owns FC1 and FC2, each a foreign corporation. USP, FC1 and FC2 use a calendar taxable year. The FC1 stock has a $40x basis and $100x fair market value. The FC2 stock has a $100x basis and $100x fair market value. As of December 31, year 1, FC1 has zero earnings and profits, and FC2 has $20x earnings and profits. On December 31, year 1, in a transaction described in section 304(a)(1), USP sells the FC1 stock to FC2 for $100x cash.

(B) Because USP wholly owns FC1 before the transactions and is treated, under section 318, as indirectly owning 100% of the FC1 stock after the transfer, under section 304(a)(1), USP and FC2 are treated in the same manner as if USP contributed the FC1 stock to FC2 in a deemed section 351 exchange in exchange solely for $100x of FC2 stock, and then FC2 redeemed for $100x cash its stock deemed issued to USP. Because USP wholly owns FC1 before the sale and is treated as owning 100% of FC1 after the sale, section 302(a) does not apply to the redemption. Instead, under section 302(d), the redemption is treated as a distribution to which section 301 applies. Pursuant to section 304(b)(2), $20x of the distribution is treated as a dividend from FC2. With respect to the remaining $80x, USP takes the position that $40x is applied against and reduces the basis of the FC2 stock issued in the deemed section 351 exchange, and $40x is applied against and reduces the basis of the FC2 stock

held by USP prior to (and after) the transaction.

(ii) *Analysis*. Under paragraph (b) of this section, USP must recognize gain of $40x on its transfer of the FC1 stock to FC2 in the deemed section 351 exchange (the amount by which the $60x gain realized by USP on the deemed section 351 exchange with respect to the F1 stock exceeds the $20x dividend inclusion). Pursuant to paragraph (b) of this section, the exception under § 1.367(a)–3(b) is not available to the transfer of the FC1 stock by USP to FC2 in the deemed section 351 exchange. Thus, USP cannot avoid gain recognition under paragraph (b) of this section by entering into a gain recognition agreement with respect to its transfer of the FC1 stock to FC2 in the deemed section 351 exchange. Under paragraph (d) of this section, the $40x gain recognized is allocated among the shares of FC1 stock transferred to FC2 in the deemed section 351 exchange in proportion to the gain realized by USP on the transfer of such shares. Under paragraph (c) of this section, the application of paragraph (b) of this section is determined prior to taking into account the $40x increase to the basis of the FC1 stock transferred by USP. Under section 362, the basis of the FC1 stock in the hands of FC2 is increased by $40x, the amount of gain recognized by the USP on the transfer of the FC1 stock under paragraph (b) of this section. Under section 358, the basis of the FC2 stock received by USP in the deemed section 351 exchange is similarly increased by $40x. See § 1.367(a)–1T(b)(4). The $40x increase to the basis of the FC2 stock is taken into account before determining the consequences of the redemption of such stock under section 304(a)(1).

(f) *Effective/applicability date*. This section applies to transfers occurring on or after February 10, 2009. See § 1.367(a)–3(a), as contained in 26 CFR part 1 revised as of April 1, 2008, for transfers occurring on or after February 21, 2006, and before February 10, 2009.

(g) *Expiration date*. This section expires on or before February 10, 2012.

■ **Par. 4.** Section 1.367(b)–4 is amended by revising the second sentence in paragraph (a) and adding paragraphs (e), (f) and (g) to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) * * * For rules applicable when, pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, see § 1.367(b)–4T(e). * * *

* * * * *

(e) [Reserved]. For further guidance, see § 1.367(b)–4T(e).

(f) [Reserved]. For further guidance, see § 1.367(b)–4T(f).

(g) [Reserved]. For further guidance, see § 1.367(b)–4T(g).

■ **Par. 5.** Section 1.367(b)–4T is added to read as follows:

§ 1.367(b)–4T Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.367(b)–4(a) through (d).

(e) Application of section 367(b) to transactions described in section 304(a)(1)—(1) *Scope and general rule*. This section applies to the extent that, pursuant to section 304(a)(1), an exchanging shareholder is treated as transferring the stock of a foreign acquired corporation to a foreign acquiring corporation in a transaction to which section 351(a) applies (deemed section 351 exchange). Except to the extent provided in paragraph (e)(2) of this section, a transfer of stock of a foreign acquired corporation by an exchanging shareholder in a deemed section 351 exchange shall not be subject to paragraph (b) of this section.

(2) *Special rule*. Notwithstanding paragraph (e)(1) of this section, a transfer of stock of a foreign acquired corporation by an exchanging shareholder to a foreign acquiring corporation in a deemed section 351 exchange shall be subject to paragraph (b) of this section to the extent the distribution received by the exchanging shareholder in redemption of the stock of the foreign acquiring corporation is applied against and reduces, pursuant to section 301(c)(2), the basis of stock of the foreign acquiring corporation held by the exchanging shareholder other than the stock deemed issued by the foreign acquiring corporation in the deemed section 351 exchange.

(3) *Allocation of income inclusion*. If the income inclusion resulting from the application of paragraph (e)(2) of this section is less than the section 1248 amount attributable to the shares of stock of the foreign acquired corporation transferred by the exchanging shareholder in the deemed section 351 exchange, the amount of the income inclusion attributable to each share of stock transferred in the deemed section 351 exchange shall be determined by multiplying the income inclusion by the percentage that the section 1248 amount attributable to such share of stock bears to the aggregate section 1248 amount attributable to all of the shares of stock transferred in the deemed section 351 exchange.

(4) *Example*. The rules of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts*. (A) FP, a foreign corporation, wholly owns USP, a domestic corporation. USP wholly owns CFC1, and CFC1 wholly owns CFC2. CFC2 wholly owns CFC3. CFC1, CFC2 and CFC3 are controlled foreign corporations within the meaning of section 957(a). USP, CFC1, CFC2 and CFC3 use a calendar taxable year. CFC1 owns 30% of the outstanding stock of FS, a foreign corporation. FP owns the remaining 70% of the outstanding stock of FS. The CFC2 stock has a $40x basis and $100x fair market value. The FS stock held by CFC1 has a $60x basis and $100x fair market value. As of December 31, year 1, CFC2 has $20x of section 1248 earnings and profits, CFC3 has $40x of section 1248 earnings and profits, and FS has zero earnings and profits. On December 31, year 1, in a transaction described in section 304(a)(1), CFC1 sells the CFC2 stock to FS for $100x cash. FS is not a controlled foreign corporation (within the meaning section 957(a)) either before or after the sale of the CFC2 stock.

(B) Because CFC1 wholly owns CFC2 before the transaction and is treated, under section 318, as indirectly owning 100% of the CFC2 stock after the transaction, under section 304(a)(1), CFC2 and FS are treated as if CFC1 contributed the CFC2 stock to FS in a deemed section 351 exchange in exchange solely for $100x of FS stock, and then FS redeemed for $100x cash its stock deemed issued to CFC1. Because CFC1 wholly owned CFC2 before the transaction and is treated, under section 318, as indirectly owning 100% of CFC2 after the transaction, section 302(a) does not apply to the redemption. Instead, under section 302(d), the redemption is treated as a distribution to which section 301 applies. Pursuant to section 304(b)(2), $20x of the distribution is treated as a dividend from the earnings and profits of CFC2. With respect to the remaining $80x, CFC1 takes the position that $40x is applied against and reduces the basis of the FS stock deemed issued in the transaction, and $40x is applied against and reduces the basis of the FS stock held by CFC1 prior to (and after) the transaction.

(ii) *Analysis*. Under paragraph (e)(2) of this section, the transfer by CFC1 of the CFC2 stock to FS in the deemed section 351 exchange is subject to paragraph (b) of this section to the extent the distribution received by CFC1 in redemption of the FS stock issued in the deemed section 351 exchange is applied against and reduces, under section 301(c)(2), the basis of the FS stock held by CFC1 before (and after) the transaction. Thus, because $40x of the distribution received by CFC1 from FS in redemption of the FS stock issued in the deemed section 351 exchange is applied against and reduces, under section 301(c)(2), the basis of the FS stock held by CFC1 before (and after) the transaction, under paragraph (b) of this section, CFC1 must include $40x in income as a deemed dividend. See § 1.367(b)–2(e) for the treatment of the $40x income inclusion. In total, CFC1 recognizes dividend income of $60x, $20x from the application of section 304(a)(1) to the sale of the CFC2 stock to FS and $40x under paragraph (b) of this section by reason of the application of paragraph (e)(2) of this section.

(f) *Effective/applicability date*. Paragraph (e) of this section applies to

transfers occurring on or after February 10, 2009. See § 1.367(b)–4, as contained in 26 CFR part 1 revised as of April 1, 2008, for transfers occurring on or after February 21, 2006, and before February 10, 2009.

(g) *Expiration date*. This section expires on or before February 10, 2012.

■ **Par. 6.** Section 1.1248–1 is amended by revising paragraphs (b) and (g) and adding paragraph (h) to read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) [Reserved]. For further guidance, see § 1.1248–1T(b).

* * * * *

(g) *Effective/applicability date*. (1) The third sentence in paragraph (a)(1), paragraph (a)(4), and paragraph (a)(5), *Example 4*, of this section apply to income inclusions that occur on or after July 30, 2007. A taxpayer may elect to apply paragraph (a)(4) of this section to income inclusions in open taxable years provided that it consistently applies paragraph (a)(4) of this section for income inclusions in the first year for which the election is applicable and in all subsequent years.

(2) [Reserved]. For further guidance, see § 1.1248–1T(g)(2).

(h) [Reserved]. For further guidance, see § 1.1248–1T(h).

■ **Par. 7.** Section 1.1248–1T is added to read as follows:

§ 1.1248–1T Treatment of gain from certain sales or exchanges of stock in certain foreign corporations (temporary).

(a) [Reserved]. For further guidance, see § 1.1248–1(a).

(b) *Sale or exchange*. For purposes of section 1248(a), the term *sale or exchange* includes the receipt of a distribution which is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock), section 331(a)(1) (relating to distributions in complete liquidation of a corporation), or section 331(a)(2) (relating to distributions in partial liquidation of a corporation). For purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with a distribution of property by a corporation with respect to its stock shall be treated as gain from the sale or exchange of stock of such corporation.

(c) through (f) [Reserved]. For further guidance, see § 1.1248–1(c) through (f).

(g) *Effective/applicability dates*. (1) [Reserved]. For further guidance, see § 1.1248–1(g)(1).

(2) Paragraph (b) of this section applies to distributions that occur on or after February 10, 2009.

(h) *Expiration date*. This section expires on or before February 10, 2012.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Approved: January 13, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–2835 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545–BA11

Consolidated Returns; Intercompany Obligations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9442) that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79324) under section 1502 of the Internal Revenue Code providing guidance regarding the treatment of transactions involving obligations between members of a consolidated group.

DATES: This correction is effective February 11, 2009, and is applicable on December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9442) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9442), which was the subject of FR Doc. E8–30718, is corrected as follows:

■ 1. On page 79325, column 2, in the preamble, under the paragraph heading ''A. Anti-Abuse Rules'', second paragraph of the column, first to fifth lines from the bottom of the paragraph, the language ''from the deemed satisfaction and reissuance model, these final regulations also adopt more specific rules regarding such transfers (described in part C.3.a. of this Preamble).'' is corrected to read ''from the deemed satisfaction-reissuance model, these final regulations also adopt more specific rules regarding such transfers (described in part C.3.a. of this preamble).''.

■ 2. On page 79325, column 3, in the preamble, under the paragraph heading ''*C. Exceptions and Related Provisions*'', third paragraph of the column, first line from the bottom of the paragraph, the language ''satisfaction-reissuance.'' is corrected to read ''satisfaction and reissuance.''.

■ 3. On page 79327, column 1, in the preamble, under the paragraph heading ''5. Exceptions to the Application of Section 108(e)(4)'', first paragraph of the column, fifth line from the bottom of the paragraph, the language ''short term debt exceptions for both'' is corrected to read ''short-term debt exceptions for both''.

Guy Traynor,

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

[FR Doc. E9–2831 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545–BA11

Consolidated Returns; Intercompany Obligations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9442) that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79324) under section 1502 of the Internal Revenue Code providing guidance regarding the treatment of transactions involving obligations between members of a consolidated group.

DATES: This correction is effective February 11, 2009, and is applicable on December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9442) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–13 is amended as follows:

1. The second sentence of paragraph (g)(3)(i)(B) is revised.
2. Paragraph (g)(3)(i)(B)(*1*)(*vi*) is revised.
3. Paragraph (g)(7)(ii) *Example 4.* (ii) is revised.
4. The paragraph title for paragraph (g)(7)(ii) *Example 4.* (iv) is added.
5. The sixth sentence of paragraph (g)(7)(ii) *Example 5.* (i) is revised.

§ 1.1502–13 Intercompany transactions.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(B) * * * In making this determination, if a creditor or debtor realizes an amount in a transaction in which a creditor assigns all or part of its rights under an intercompany obligation to the debtor, or a debtor assigns all or part of its obligations under an intercompany obligation to the creditor, the transaction will be treated as an extinguishment and will be excepted from the definition of ''triggering transaction'' only if either of the exceptions in paragraphs (g)(3)(i)(B)(*5*) or (*6*) of this section apply. * * *

(*1*) * * *

(*vi*) The stock of the transferee member (or a higher-tier member other than a higher-tier member of an 80-percent chain that includes the transferor and transferee) is disposed of within 12 months from the assignment of the intercompany obligation, unless at the time of the assignment, the transferor member, transferee member (or in the case of successive section 351 exchanges, each transferor and transferee member) and the debtor member are all in the same 80-percent chain; and all of the stock of the transferee (or in the case of successive section 351 exchanges, the lowest-tier transferee) held by members of the group is disposed of as part of the same plan or arrangement, either directly or indirectly, to persons that are not members of the group.

* * * * *

(7) * * *

(ii) * * *

Example 4. * * *

(ii) *No deemed satisfaction and reissuance.* Because the assignment of the B note is an exchange to which section 351 applies and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

* * * * *

(*iv*) *Transferee loss subject to limitation.* * * *

* * * * *

Example 5. * * *

(i) * * * The terms and conditions of the note are not modified in connection with the sales transaction, the transaction does not result in a change in payment expectations, and no amount of income, gain, deduction, or loss is recognized by S, B, or T with respect to the note.

* * * * *

Guy Traynor,

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

[FR Doc. E9–2828 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9445]

RIN 1545–BF21

Procedures for Administrative Review of a Determination That an Authorized Recipient Has Failed To Safeguard Tax Returns or Return Information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding administrative review procedures for certain government agencies and other authorized recipients of returns or return information whose receipt of returns and return information may be suspended or terminated because they do not maintain proper safeguards. The regulations provide guidance to responsible IRS personnel and authorized recipients as to these administrative procedures.

DATES: *Effective Date:* These regulations are effective on February 11, 2009.

Applicability Date: These regulations apply to all authorized recipients of returns and return information that are subject to the safeguard requirements set forth in section 6103(p)(4) on or after February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Wendy L. Kribell, (202) 622–4570 (not a toll-free number).

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6103(p)(4), (p)(7), and (q) of the Internal Revenue Code (Code). Section 6103 protects returns and return information from disclosure except to certain government agencies and other authorized recipients, including State tax agencies as provided in section 6103(d). Section 6103(p)(4) provides that certain authorized recipients must establish procedures satisfactory to the IRS for safeguarding the returns and return information. The IRS reviews, on a regular basis, safeguards established by these authorized recipients. If the IRS determines that an authorized recipient has failed to maintain adequate safeguards or has made any unauthorized inspections or disclosures of returns or return information, section 6103(p)(4) authorizes the IRS to terminate or suspend disclosure of returns and return information to the authorized recipient until the IRS is satisfied that adequate steps have been taken to ensure adequate safeguards or prevent additional unauthorized inspections or disclosures.

Section 6103(p)(7) requires the Secretary to prescribe regulations providing for administrative review of an IRS determination that a State tax agency has failed to meet the safeguarding requirements. Former § 301.6103(p)(7)-1 contained procedures to allow State tax agencies, prior to a suspension or termination of disclosure, to appeal a preliminary finding by the IRS of inadequate safeguards or

unauthorized disclosure, or to establish that the agency had taken steps to prevent a recurrence of the violation. Section 6103(q) further authorizes the Secretary to prescribe such other regulations as are necessary to carry out the provisions of section 6103 generally.

On February 24, 2006, the Treasury Department and IRS published in the **Federal Register** proposed regulations (REG–157271–05, 71 FR 9487) and temporary regulations (TD 9252, 71 FR 9449) to extend the administrative review procedure for State tax agencies to ''any'' authorized recipient specified in section 6103(p)(4), and to include unauthorized inspection within the IRS's scope of review (in addition to inadequate safeguards and unauthorized disclosure). Two written comments were received, and no public hearing was requested or held. After consideration of the comments received, the proposed regulations are adopted as final regulations, and the corresponding temporary regulations are removed. See § 601.601(d)(2)(ii)(*b*).

Explanation and Summary of Comments

The first commentator suggested that the final regulations expressly provide that the IRS may give written notice of its intention to terminate or suspend disclosure via facsimile or electronic mail. This suggestion was not adopted because nothing in the regulations precludes a written notice from being delivered electronically. Not specifying the means by which written notice is conveyed would also afford greater flexibility in providing notice as other means might evolve.

The second commentator suggested that the proposed regulations would legalize the misuse of returns and return information and thereby discourage taxpayers from seeking tax advice. This suggestion is unwarranted. Section 6103 protects returns and return information from disclosure except to authorized recipients. Section 6103(p)(4) requires certain authorized recipients to establish procedures for safeguarding returns and return information. If the authorized recipient fails to maintain adequate safeguards or has made any unauthorized inspections or disclosures, additional disclosures to that recipient may be suspended or terminated until the IRS is satisfied that adequate steps have been taken to ensure adequate safeguards or prevent additional unauthorized inspections or disclosures. Prior to these final regulations, procedures were available pursuant to section 6103(p)(7) to allow State tax agencies, prior to a suspension or termination of disclosure, to appeal a preliminary finding of inadequate safeguards or unauthorized disclosure, or to establish that the agency had taken steps to prevent a recurrence of the violation. The purpose of these final regulations is to extend these administrative review procedures from State tax agencies to all authorized recipients described in section 6103(p)(4) and to include a preliminary finding of unauthorized inspection within the scope of review. The extension of these provisions to all authorized recipients enhances the protections afforded to returns and return information.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Wendy L. Kribell, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6103(p)(4)–1 is added to read as follows:

§ 301.6103(p)(4)–1 Procedures relating to safeguards for returns or return information.

For security guidelines and other safeguards for protecting returns and return information, see guidance published by the Internal Revenue Service. For procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information, see § 301.6103(p)(7)–1.

§ 301.6103(p)(4)–1T [Removed]

■ **Par. 3.** Section 301.6103(p)(4)–1T is removed.

■ **Par. 4.** Section 301.6103(p)(7)–1 is added to read as follows:

§ 301.6103(p)(7)–1 Procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information.

(a) *In general.* Notwithstanding any section of the Internal Revenue Code (Code), the Internal Revenue Service (IRS) may terminate or suspend disclosure of returns and return information to any authorized recipient specified in section (p)(4) of section 6103, if the IRS determines that:

(1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and that the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or

(2) The authorized recipient does not satisfactorily maintain the safeguards prescribed by section 6103(p)(4), and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

(b) *Notice of IRS's intention to terminate or suspend disclosure.* Prior to terminating or suspending authorized disclosures, the IRS will notify the authorized recipient in writing of the IRS's preliminary determination and of the IRS's intention to discontinue disclosure of returns and return information to the authorized recipient. Upon so notifying the authorized recipient, the IRS, if it determines that tax administration otherwise would be seriously impaired, may suspend further disclosures of returns and return information to the authorized recipient pending a final determination by the Commissioner or a Deputy Commissioner described in paragraph (d)(2) of this section.

(c) *Authorized recipient's right to appeal.* An authorized recipient shall have 30 days from the date of receipt of a notice described in paragraph (b) of

this section to appeal the preliminary determination described in paragraph (b) of this section. The appeal shall be made directly to the Commissioner.

(d) *Procedures for administrative review.* (1) To appeal a preliminary determination described in paragraph (b) of this section, the authorized recipient shall send a written request for a conference to: Commissioner of Internal Revenue (Attention: SE:S:CLD:GLD), 1111 Constitution Avenue, NW., Washington, DC 20224. The request must include a complete description of the authorized recipient's present system of safeguarding returns or return information received by the authorized recipient (and its authorized contractors or agents, if any). The request must state the reason or reasons the authorized recipient believes that such system or practice (including improvements, if any, to such system or practice expected to be made in the near future) is or will be adequate to safeguard returns or return information.

(2) Within 45 days of the receipt of the request made in accordance with the provisions of paragraph (d)(1) of this section, the Commissioner or Deputy Commissioner personally shall hold a conference with representatives of the authorized recipient, after which the Commissioner or Deputy Commissioner shall make a final determination with respect to the appeal.

(e) *Effective/applicability date.* This section applies to all authorized recipients of returns and return information that are subject to the safeguard requirements set forth in section 6103(p)(4) on or after February 11, 2009.

§ 301.6103(p)(7)–1T [Removed]

■ **Par. 5.** Section 301.6103(p)(7)–1T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: January 13, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–2827 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulations at 29 CFR Part 1611, which implement the Privacy Act of 1974, to exempt one of its systems of records from one of the Act's requirements.

DATES: *Effective Date:* February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663–4640 (voice) or (202) 663–7026 (TTY). Copies of this final rule are also available in the following alternate formats: large print, Braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission is adding a new section 1611.15 to its Privacy Act regulations to exempt records contained in EEOC–22, EEOC Personnel Security Files, from the accounting and disclosure provisions of the Privacy Act in accordance with section k(5) of the Act, but only to the extent that an accounting of disclosures or a disclosure itself identifies witnesses promised confidentiality as a condition of providing information during the course of a background investigation. The Commission is also amending sections 1611.5(a)(5) and 1611.5(b) to conform them to the addition of the new exemption.

The Commission published these proposed changes in a Proposed Rule on March 31, 2008. 73 FR 16806. EEOC did not receive any comments on the proposed rule. This final rule, therefore, adopts the amendments proposed without change.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action concerns agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1611

Privacy Act.

Dated: February 4, 2009.

For the Commission.

Stuart J. Ishimaru,

Acting Chairman.

■ Accordingly, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1611—PRIVACY ACT REGULATIONS

■ 1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. In section 1611.5 revise paragraphs (a)(5) and (b) to read as follows:

§ 1611.5 Disclosure of requested information to individuals.

(a) * * *

* * * * *

(5) The Commission shall not deny any request under § 1611.3 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5

U.S.C. 552a in §§ 1611.13, 1611.14, or 1611.15.

* * * * *

(b) Upon request, the appropriate Commission official shall make available an accounting of disclosures pursuant to 5 U.S.C. 552a(c)(3), unless that system is exempted from the requirements of 5 U.S.C. 552a in §§ 1611.13, 1611.14, or 1611.15.

* * * * *

■ 3. Section 1611.15 is added to read as follows:

§ 1611.15 Exemption—EEOC Personnel Security Files.

EEOC's system of records entitled EEOC Personnel Security Files contains records that document and support decisions regarding suitability, eligibility and fitness for service of applicants for EEOC employment and contract positions. The records include background investigation records. Pursuant to section (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), this system of records is exempt from the provisions of sections (c)(3) and (d)(1) of the Privacy Act, 5 U.S.C. 552a(c)(3) and (d)(1), but only to the extent that the accounting of disclosures or the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence.

[FR Doc. E9–2816 Filed 2–10–09; 8:45 am]

BILLING CODE 6570–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. 2006–3 CRB DPRA]

Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are announcing four modifications to the royalty terms previously adopted in their final determination of rates and terms for the mechanical and digital phonorecord delivery statutory license. These modifications are made to more clearly reflect the law as stated in the Register of Copyrights' decision of January 26, 2009.

DATES: *Effective Date:* March 1, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 24, 2008, the Copyright Royalty Judges (''Judges'') issued their final determination establishing rates and terms for the mechanical and digital phonorecord delivery statutory license found at 17 U.S.C. 115.[1] Rates and terms were promulgated for the use of musical works in physical phonorecords, permanent downloads, ringtones, limited downloads, interactive streaming and incidental digital phonorecord deliveries. Rates and terms for the latter three categories—limited downloads, interactive streaming and incidental digital phonorecord deliveries—were adopted pursuant to an agreement reached by all participants in the proceeding and presented to the Judges for adoption. After publishing the agreement in the **Federal Register** and allowing interested parties to comment as required by 17 U.S.C. 801(b)(7)(A), the Judges determined that the same section did not allow them to review or reject the agreement, or portions thereof, in the absence of an objection from one of the participants to the proceeding. Under the Judges' interpretation of the statute, if an objection is filed, the Judges may review the agreement for reasonableness. However, with no objection tendered, the agreement should be adopted *in toto*.

On January 26, 2009, the Register of Copyrights published a notice in the **Federal Register** pursuant to 17 U.S.C. 802(f)(1)(D). 74 FR 4537 (January 26, 2009). That section provides that the ''Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges.'' The Register faulted our adoption of the participants' agreement of rates and terms for limited downloads, interactive streaming and incidental digital phonorecord deliveries, concluding that ''it was legal error for the CRJs to conclude that the restrictions on its authority to review the reasonableness of specific valid terms and rates also precluded its review of the legality of the provisions of the agreement as a threshold matter.'' 74 FR at 4540. The Register further stated that her ''conclusion is consistent with the CRJs' decision that it had the authority to decline to adopt language in the participants' agreement that stated that the rates in the agreement have no precedential effect and may not be introduced or relied upon in any governmental or judicial proceeding.'' *Id., citing* 72 FR 61586 (October 31, 2007).[2]

It is evident from the Register's pronouncement that the Copyright Act grants the Judges considerably broader authority over review of agreements than discerned by the Judges in the statute. The Register stated that an agreement must pass a threshold review prior to the application of 17 U.S.C. 801(b)(7)(A). The Judges have the authority, and in fact the obligation, to review any and all provisions in an agreement. Provisions that are deemed legally erroneous may not be part of the codification based on the agreement; otherwise their adoption results in an error of law. *See* 74 FR at 4540. The Register stated that once the agreement is vetted for errors of law, the remaining portions of the agreement may be adopted as the agreement of the participants unless, of course, there is an objection from one or more of the participants in which case the procedures set forth in section 801(b)(7)(A) would apply.

The Register identified four provisions in the agreement adopted in the Code of Federal Regulations that contain errors of law. All four were in the participants' agreement. First, the Register concluded that the second sentence of the definition of an ''interactive stream'' contained in § 385.11 of the regulations was in error because it altered the statutory terms of the section 115 license regarding what constitutes a digital phonorecord delivery.[3] 74 FR at 4541. That sentence

[1] The Librarian of Congress, pursuant to 17 U.S.C. 803(c)(6), published the Judges' determination in the **Federal Register** on January 26, 2009. *See* 74 FR 4510.

[2] The cited proceeding established the rates and terms for preexisting subscription services making digital transmissions of sound recordings and ephemeral recordings. Docket No. 2006–1 CRB DSTRA. The Judges made two changes to the agreement submitted by the parties in that proceeding, changing the numbering of the proposed provisions to reflect their ultimate position in Chapter III of title 37 of the Code of Federal Regulations, and correcting a clerical error in the agreement for the location to submit notices of intention to audit preexisting subscription services. The Judges also eliminated a provision concerning the experimental and precedential effect and use of rates in an agreement in a proceeding to adjust the rates and terms for noncommercial educational broadcasting services under 17 U.S.C. 118. 72 FR 19138 (April 17, 2007). We declined to give such a term effect because it was outside the scope of our jurisdiction to set rates for the section 118 license. 72 FR at 19139 (''It is not our task to offer evaluations, limitations or characterizations of the rates and terms, or make statements about their use or value in proceedings other than this one.'').

[3] The Register asserts the faulty provision contained in the § 385.11 definition of an ''interactive stream'' is the product of the Judges'

provides that ''[a]n interactive stream is an incidental digital phonorecord delivery under 17 U.S.C. 115(c)(3)(C) and (D).'' Second, the Register determined that § 385.14(e) of the regulations, which establishes a promotional royalty rate for promotional interactive streams and limited downloads offered in the context of a free trial period for a digital music subscription service, amounts to impermissible retroactive rulemaking. *Id.* at 4542. Third, the Register concluded that § 385.15 of the regulations, which addresses the timing of royalty payments, was violative of the provisions of 17 U.S.C. 115(c)(5). *Id.* Fourth, the Register found error with the final sentence of § 385.14(a)(4), which provides that ''For the avoidance of doubt, however, except as provided in paragraph (a) of this section, statements of account under 17 U.S.C. 115 need not reflect interactive streams or limited downloads subject to the promotional royalty rate.'' She determined that this sentence is contrary to her authority to prescribe regulations for statements of account under the section 115 license. *Id.* at 4543.

Given the Register's legal determination that the Copyright Royalty Judges have broader powers of review of agreements submitted in royalty rate and distribution proceedings, the Judges are exercising their authority under 17 U.S.C. 803(c)(4) and are modifying the terms adopted in §§ 385.11, 385.14 and 385.15. Although the Register clearly recognizes that her decision identifying certain errors of copyright law is only binding as precedent upon the Judges in subsequent proceedings, the Register suggests certain of these legal errors may be within the Judges' discretion to correct even in the instant proceeding under the continuing jurisdiction provisions of 17 U.S.C. 803(c)(4).

That statutory provision establishes continuing jurisdiction under which the Judges may ''issue an amendment to a written determination to correct any technical or clerical errors in the determination *or to modify the terms*, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination.'' 17 U.S.C. 803(c)(4) (emphasis added). The Register further interprets this provision of the statute as applicable even to the participants' partial agreement, notwithstanding the Judges' previously articulated view of the statutory limits on their review of such agreements. 74 FR at 4541, 4543.

Following the Register's view of the Judges' statutory discretion to ''correct'' agreements, though only binding as to future proceedings, offers a singular advantage in the instant proceeding to clarify potential confusion facing users of the license at issue (some of whom may not have been parties to the partial agreement). Because the Register's published decision has interpreted certain provisions of the partial agreement of the participants regarding limited downloads and interactive streaming in this proceeding as necessarily implicating errors of copyright law and, at the same time, because the partial agreement of the participants containing the offending terms were previously published as statutorily required together with the Judges' resolution of litigated issues, users of the license may well be confused as to the status of the currently codified terms. In order to clarify those terms by means of an updated codification and, thereby, to promote an efficient administration of the applicable license, we find, pursuant to the Register's statement of our discretion under 17 U.S.C. 803(c)(4), four terms which should be clarified by means of the issuance of amended regulations to more clearly reflect the law as stated in the Register's decision. Because they are contrary to law, the following are deleted: (1) The second sentence of the definition of an ''interactive stream'' in § 385.11; (2) § 385.14(e); (3) § 385.15; and (4) the last sentence of § 385.14(a)(4). The Judges act under the Register's determination that agreements of the participants may be modified to excise provisions that conflict with law and still be the agreement of the participants. The basis for the regulations in Subpart B is the agreement presented by the participants pursuant to 17 U.S.C. 801(b)(7)(A). The Judges decline to add provisions to the participants' agreement, as the Register suggests, to correct errors of law and still treat it as an agreement of the participants under section 801(b)(7)(A).

So ordered.

William J. Roberts, Jr.,
Copyright Royalty Judge.

Stanley C. Wisniewski,
Copyright Royalty Judge.

Dated: February 6, 2009.

Dissenting Opinion of Chief Copyright Royalty Judge Sledge

With utmost respect for my esteemed colleagues, Marybeth Peters, Register of Copyrights, and Copyright Royalty Judges Stanley C. Wisniewski and William J. Roberts, Jr., the Chief Copyright Royalty Judge, James Scott Sledge, dissents. The Copyright Royalty and Distribution Reform Act of 2004 is relatively new. This proceeding is the third rate determination proceeding tried to completion with a final determination under the new act. Appeals are pending on the first two rate proceedings. The Register of Copyrights, the Copyright Royalty Judges, the participants and the public are all trying to implement the new act and faithfully follow its provisions. Consistent with all new legislation, the implementation will evolve as the common law develops. I dissent from the amendment to the final determination, only because I feel an amendment is inappropriate and unwarranted. If an amendment is appropriate to be issued, I do not oppose any part of the analysis in the majority amendment. This dissenting opinion is the first instance that any order or ruling, written or oral, of the Copyright Royalty Judges has not been unanimous. We can be proud of our record of harmony and this dissent is made after careful deliberation.

The Judges are not required to amend the final determination unless the Court of Appeals reverses and orders changes. The Judges have full independence in making initial determinations of copyright royalty rates and terms, subject only to a Register's decision following a referral of a novel question or a request for an interpretation of a material question of substantive law in title 17. 17 U.S.C. 802(f)(1)(A) and (B). A review of the Judges' final

failure to refer to her under 17 U.S.C. 802(f)(1)(B) the question of what constitutes a digital phonorecord delivery as defined in 17 U.S.C. 115(d), 74 FR at 4539 (''Failure to refer the question of what constitutes a DPD to the Register has led to the adoption of a regulation that, on its face, overstates the scope of the section 115 license with respect to interactive streams''), leading her to conclude that there are two errors of law on the same matter. *Id.* (''The CRJs' failure to refer a novel material question of substantive law is itself an erroneous legal resolution of 'a material question of substantive law under [title 17] that underlies or is contained in a final determination of the [CRJs],' '' *citing* 17 U.S.C. 802(f)(1)(D)). As discussed *infra*, we are removing the second sentence from the definition of an interactive stream contained in § 385.11 of the regulations. We cannot discern authority in the cited section 802(f)(1)(D), or any other section of the Copyright Act, that a procedural decision—to refer or not to refer—is itself an error of substantive law, particularly where the procedural matter is neither contained in nor underlies our final determination.

The statutory scheme embodied in 17 U.S.C. 801 *et seq.*, specifically limits the participation of the Register in a rate-setting proceeding to certain questions of ''substantive law.'' 17 U.S.C. 802(f)(1)(A), (B), (D). A decision whether or not to refer a matter for review by the Register is one of procedure and, thus, not reviewable by the Register under the Act. Therefore, the error of law that underlies and is indeed contained in our final determination is the second sentence of the definition of an interactive stream as codified in § 385.11 of the regulations, which is being removed in this amendment to the determination.

determination for legal error by the Register is precedent in subsequent proceedings under Chapter 8. 17 U.S.C. 802(f)(1)(D). The Register does not claim the authority to direct amendments in the determination and regulations, like a remand, and her corrections to the legal errors she found are suggestions to the Judges.

The Judges are not authorized to make the corrections suggested by the Register. Section 803(c)(4) only permits an amendment to a final determination to correct technical or clerical errors or to modify terms in response to unforeseen circumstances that would frustrate the proper implementation of the determination. The Register's suggested changes are substantive changes of rates and terms. A determination of what constitutes a technical or clerical error is not a material question of substantive law in title 17 that is subject to the Register's authority in section 802(f)(1)(D). If any correction suggested by the Register is an unforeseen circumstance, one must conclude that it is unreasonable or unforeseeable for the Register to review a determination and find legal error.

The Judges should not make the suggested changes to the determination as they are not consistent with Chapter 8. The change to the agreement presented by all the participants discourages settlements. The procedure in proceedings throughout section 803 encourages settlements. Section 801(b)(7)(A) encourages settlements and does not include the threshold requirement suggested by the Register for a review to delete any provision that is contrary to law. The suggested change would adopt an agreement of the participants after provisions are deleted and new provisions added, notwithstanding the non-severability restrictions in the agreement. This practice discourages settlements. The changes hinder judicial efficiency by encouraging parties that are disgruntled or losing arguments in a proceeding to make last-minute requests to refer novel questions of law to the Register. Also, the Judges would be reviewing agreements for legal error after the record is closed and shortly before the determination is required to be issued, which was the timing of the agreement in this case. The changes involve the Register in procedural issues in a proceeding. An order granting or denying a motion to refer a novel question of law is a procedural, interlocutory order that is not subject to Register review, section 802(f)(1)(A)(ii), and is not a material question of law under title 17 that underlies or is contained in a final determination. The changes undermine the statutorily conferred independence of the Judges, section 802(f)(1)(A).

Rather than amend the determination, I would hold that the determination and regulations should remain as published.

James Scott Sledge,
Chief U.S. Copyright Royalty Judge.
Dated: February 6, 2009.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Final Regulation

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are further amending Part 385 of Chapter III of title 37 of the Code of Federal Regulations as published January 26, 2009, at 74 FR 4510 as follows:

PART 385—RATES AND TERMS USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

§ 385.11 [Amended]

■ 2. Section 385.11 is amended by removing the last sentence from the definition of ''Interactive stream''.

§ 385.14 [Amended]

■ 3. Section 385.14 is amended as follows:

■ a. In paragraph (a)(4), by removing the last sentence; and

■ b. By removing paragraph (e).

§ 385.15 [Removed and Reserved]

■ 4. Remove and reserve § 385.15.

Dated: February 6, 2009.

James Scott Sledge,
Chief U.S. Copyright Royalty Judge.

[FR Doc. E9–2900 Filed 2–10–09; 8:45 am]
BILLING CODE 1410–72–P

Proposed Rules

Federal Register
Vol. 74, No. 27
Wednesday, February 11, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24587; Directorate Identifier 2006–SW–05–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, B, and C helicopters. That AD proposed to require inspecting each installed HR Textron main rotor servo actuator (servo actuator) for a high rate of leakage and for contaminated hydraulic fluid and reducing the time-in-service (TIS) interval for overhauling each servo actuator. That proposal was prompted by a National Transportation Safety Board (NTSB) Safety Recommendation issued in response to an accident involving a Model S–76 helicopter. In the NTSB Recommendation, the performance of an HR Textron servo actuator was questioned as a result of piston head seal leakage and piston head plasma spray flaking. Since the issuance of the initial proposal, and based on further information obtained from the accident investigation, the comments to the proposal, and other test and service history data since we issued the initial proposal, we continue to believe that servo actuator pistons may experience piston head seal leakage and plasma spray flaking, but have determined that the full scope of the initial proposal is unnecessary. We believe that the piston head seal leakage and plasma spray flaking can be addressed by leakage rate inspections and replacement of the current servo actuator pistons with an improved design not as susceptible to plasma spray flaking. Therefore, we are revising the proposed rule by removing the requirement to inspect the hydraulic fluid for contamination; removing the requirement to reduce the interval for overhauling an affected servo actuator from 3,000 to 2,000 hours TIS; revising the initial inspection time; and removing the 600 hours TIS repetitive hydraulic fluid leak inspection. We are proposing to add a 2,250 hours TIS hydraulic fluid leakage inspection and to add a requirement to either install a new design servo actuator or replace the servo actuator pistons when there is excessive leakage or upon reaching a certain time interval. These actions are intended to prevent degraded servo actuator performance as a result of piston head seal leaking and plasma spray flaking, which could result in subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 13, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, 6900 Main Street, Stratford, Connecticut, phone (203) 383–4866, email address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2006–24587, Directorate Identifier 2006–SW–05–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

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

Discussion

A proposal to amend 14 CFR part 39 to add an AD for Sikorsky Model S–76A, B, and C helicopters with HR Textron servo actuators, part number (P/N) 76650–09805, installed, was published in the **Federal Register** on May 2, 2006 (71 FR 25783). That notice of proposed rulemaking (NPRM) incorrectly referenced the ''HR Textron servo actuator, P/N 76650–09805.'' It should have stated ''servo actuator, Sikorsky P/N 76650–09805 (HR Textron P/N 3006760).'' That NPRM proposed to

require, within 25 hours TIS, and thereafter at intervals not to exceed 600 hours TIS, determining the leakage rate for each of the three installed servo actuators by installing a test line in each servo actuator return port and turning on the hydraulic power. If the leakage rate exceeded 700 cc per minute in any servo actuator, we proposed to require replacing that servo actuator with an airworthy servo actuator before further flight. That proposed AD would have also required inspecting the hydraulic fluid for contamination using a patch test kit or an independent laboratory analysis method. If the inspection indicated that the hydraulic fluid was contaminated, the proposed AD would have required flushing and refilling the hydraulic system with uncontaminated hydraulic fluid before further flight. The proposed AD also would have required reducing the TIS interval for overhauling an affected servo actuator from 3,000 to 2,000 hours TIS.

Since issuing that NPRM, we have received comments from 10 commenters, including two separate comments from the manufacturer, and a comment from the NTSB. We have reviewed the comments on that proposed rule and further analyses and test data.

Seven commenters recommended that the NPRM be withdrawn. Another commenter recommended that no AD be published ''until the FAA is absolutely certain that existing manufacturer's maintenance criteria were performed by experienced technicians.''

One of these commenters, Air Logistics, states several reasons why the NPRM should be withdrawn. First, they cite their 30 years of operational experience with Sikorsky helicopters, during which they had not experienced any servo failures. Second, they state that the results of Sikorsky testing indicates that servo actuators with leakage rates as high as 3000 cc per minute in one stage had the capacity to perform the entire mission spectrum. Third, they have conducted their own internal leak tests and hydraulic oil analyses and no defects or contaminations were found. Fourth, they state there is ''no evidence'' presented by the NTSB or FAA to justify the NPRM. Finally, they state that the 1,000 hour TIS reduction would impose thousands of dollars of unnecessary expense without improving safety.

Another commenter, Sikorsky Aircraft Corporation, states that the NPRM should be withdrawn for several reasons. First, they state that the scope of the NPRM is without authority because there is no unsafe condition and the NPRM is based on an NTSB recommendation founded upon ''preliminary speculation'' regarding the root cause of an aircraft mishap that has been shown by testing and analysis to be without merit. Second, they state that they have 28 years and 9 million servo actuator flight hours, operational testing, materials analysis, and assessments of servo actuator operation within the fleet with no related operational problems. Third, they state that the existing maintenance program is adequate to assure safe, airworthy operation of the hydraulic system and its associated hardware, ''including the main rotor servo actuator, within the current defined overhaul intervals based on operator data.'' ''This servo design has performed for over 25 years with no service anomalies.'' Fourth, they cite ''extensive laboratory testing'' conducted by them demonstrating that ''normal servo control is maintained throughout the certified flight envelope, even with leakage and wear particle conditions up to three times the [Sikorsky S76] Maintenance Manual limits'', and state that the ''servo actuator is airworthy for the entire certificated flight envelope even with significant fluid contamination and internal leakage, while operating on one stage only.'' Fifth, they state that implementing the AD would create an unnecessary maintenance burden on the operators and increase fleet operating costs while providing no benefit. Additionally, the commenter provided several additional ''Specific Comments''. These specific comments further argue the contention that (1) performance of the servo is compromised by internal leakage and plasma spray flaking is incorrect; (2) servo internal leakage and hydraulic fluid contamination from flaking spray could result in loss of control of the aircraft is incorrect; (3) more frequent leakage tests are required to maintain servo airworthiness is unfounded; (4) more frequent hydraulic fluid cleanliness inspections are unwarranted; and (5) reducing the servo overhaul interval is unnecessary.

Another commenter, Carl Violette, states that the NPRM should be withdrawn for several reasons. First, he cites his experience of 25 years and 60,000 flight hours of maintaining accident-free operations of the Model ''S–76 variants.'' Second, he states that overhauling all three Model S–76 servo actuators 1,000 hours TIS early when the leakage rates are so low is ''ludicrous.'' Third, he states that the 600 hour TIS inspection interval ''doesn't make sense'' considering the existing 100 hour TIS inspection. Fourth, he states that performing contamination inspections on the aircraft is ''pointless'' since the fluid is usually supplied by the hydraulic mule, which has a finer filter than the aircraft one, and therefore one would only find filtered hydraulic fluid in the aircraft. Fifth, he states that the NPRM will increase helicopter operating costs from $15 per hour to $22.50 per hour, and will cost their company an additional $9,000 per year without any failed servo actuators. Sixth, he states that the servo actuator ''jump'' check performed by the pilot each time the aircraft is started is a ''better check'' and would inform the pilots if there were any issues with the servo actuators. Seventh, he states that there is ''no way'' that the servo actuator could extend beyond the pilot's inputs without a mechanical breakage somewhere, and that minuscule flakes won't prevent the 3,000 PSI fluid from going where it wants to go. Eighth, Mr. Violette commented that he found it ''cavalier'' that so little research was done on this proposal in light of the seriousness of the incident. He questioned the proposed frequency of the leakage checks, and why this leakage prompts us to lower the overhaul interval. He further stated that if contamination checks are required, then more guidance is required. He stated, ''If a patch test is done, what is the accept/reject criteria? Can I send fluid to a lab instead? What are their accept/reject criteria? When should I replace a servo?'' He stated that he doesn't understand how the proposed AD makes the aircraft safer.

Another commenter, Helicopter Support, Inc., states that the NPRM should be withdrawn for several reasons. First, in 20 years of overhaul and repair experience, they found flaking of the Model S–76 servo actuator piston plasma spray in only extremely rare circumstances. Second, Sikorsky testing showed ''no connection between internal leakage of the main rotor servo actuator and subsequent loss of control of the helicopter.'' Third, a reduction in the overhaul interval from 3,000 to 2,000 hours TIS would impose an unnecessary financial burden, and would increase maintenance costs and negatively impact flight availability. Fourth, the maintenance procedures called out in Chapters 5 & 29 of the Sikorsky S–76 Maintenance Manual ''are sufficient to identify leakage and contamination'' in the servo actuator system. Fifth, performing the leakage rate check is subjective and can lead to costly false removals of the servo actuator. Sixth, the 600 hours TIS patch test can be addressed by the 12 month

patch test requirement in the Sikorsky S–76 Maintenance Manual.

Another commenter, Aero Med Spectrum Health, cited their 14 or more years of operating both Model S–76A and Model S–76B helicopters without any operational problems or internal failures of the servo actuators, or anomalies reported by the crew, as evidence that the AD is unnecessary.

Another commenter, HR Textron, stated that the AD is unnecessary because the NPRM is based on ''speculation of an NTSB investigator'' with respect to a Model S–76 helicopter accident that has been shown to be ''without substance or merit,'' and extensive testing by HR Textron and Sikorsky have demonstrated that ''internal leakage and/or plasma spray flaking do not create an unsafe condition.'' Further, information on the flight data recorder of the accident helicopter ''do not support the theory that a mechanical malfunction of the servo caused the mishap.''

Another commenter, Jay Deering, feels that the AD is ''unnecessary'' and will cause undue hardship for the operator.

Another commenter, Steve Strollo, states that the ''AD should not be published until the FAA is absolutely certain that existing manufacturer's maintenance criteria were performed by experienced technicians.'' He further states that in his 26 years as an A&P mechanic, he has seen only one serious servo actuator failure due to ''tissue thin wall thickness along the entire length of the tube'' and the pilots were unaware of the malfunction. He has never experienced excessive contamination of a hydraulic system, or a failed patch test. Also, he believes that degradation of the accident servo ''did not occur overnight'' and that if the 300 hours TIS inspection is performed correctly, damage to the servo actuator can be easily spotted.

Regarding Mr. Strollo's comment referencing the 300 hours TIS inspection, that is an inspection pertaining to ''noticeable wear of the chrome plating on the visible surface'' of the servo actuator piston that is not required by an AD and is not relevant to this proposal.

Two commenters, Copterline Oy (Copterline) and the NTSB, supported the NPRM.

One commenter, Copterline, was the operator of the Sikorsky Model S–76 helicopter that crashed shortly after taking off in Estonia in 2005 and prompted the NTSB safety recommendation. Copterline states that the NPRM should be adopted in its entirety and expanded to include other servo actuators in which there is ''a possibility for manufacturing process error'' which can cause plasma coating to delaminate and block the servo actuator return ports, leading to loss of control of the helicopter. They state that ''the reason why the Plasma coating flakes off remains unaddressed.'' They state that the NPRM should be expanded to include additional testing—for example, x-ray, ultrasonic, or other appropriate testing—to confirm that the plasma coating has adhered to the servo actuator pistons, which will further reduce risk. This commenter states that the NPRM should be more comprehensive. Copterline also states that the NPRM should propose a reduction in the servo actuator piston life limit until the plasma spray flaking problem has been resolved. Copterline cites NTSB laboratory findings and states that it agrees with Sikorsky that when one of the two return flow ports is blocked, safe operations can be conducted. However, if both return ports of the control valve have been blocked, the bypass function is not available and the blocked side will jam the other stage. They state that the ''laboratory testing results justify the NTSB's concern.'' Copterline also states that the proposed AD actions and even the additional requirements that they propose ''would not adversely affect the S–76 operators and, in practise, [sic] would not materially increase operating costs of the S–76 fleet.'' This commenter also states that continued accidents would be reflected in increased insurance premiums that would more than offset any short term savings associated with not taking appropriate action.

Additionally, this commenter attached a copy of its ''Detailed Comments to Sikorsky's Comments on FAA and AOL'' Web sites. These comments are consistent with those made to the NPRM.

Another commenter, the NTSB, also supports the NPRM, and states that ''results of the Safety Board and Sikorsky tests demonstrate the need for issuance of a final rule consistent with the proposed AD as soon as possible.''

Based on the comments summarized previously and our re-evaluation of the published proposal, we agree with various portions of the comments proposing withdrawal of the NPRM and portions of those supporting the NPRM. With respect to those comments citing operational experience, lack of supportive evidence by the FAA or NTSB, testing results, adequacy of existing maintenance programs, imposition of costly procedures without an increase in safety, and inappropriateness of the proposed procedures as evidence supporting withdrawal, we have determined that portions of the initial proposal are unnecessary to correct the unsafe condition, although there is still uncertainty about the root cause of the accident. Based on our reevaluation, we continue to believe that servo actuator pistons may experience piston head seal leakage and plasma spray flaking, but this does not justify the full scope of the initial proposal. We believe that the piston head seal leakage and plasma spray flaking can be addressed adequately by leakage rate inspections and replacement of the current servo actuator pistons with an improved design not as susceptible to plasma spray flaking. The reduction in the overhaul interval from 3,000 to 2,000 hours TIS is not necessary if the leakage rate inspection is performed, and the leakage rate inspection is a better way of determining servo actuator condition than the hydraulic fluid patch test. Therefore, in order to prevent degraded servo actuator performance as a result of piston head seal leaking and plasma spray flaking, which may result in subsequent loss of control of the helicopter, we are revising the proposed rule by removing the requirement to inspect the hydraulic fluid for contamination using a patch test kit or an independent laboratory analysis method; removing the requirement to reduce the interval for overhauling an affected servo actuator from 3,000 to 2,000 hours TIS; revising the initial inspection time; and removing the 600 hours TIS repetitive hydraulic fluid leak inspection. We are proposing to add a 2,250 hours TIS hydraulic fluid leakage inspection to the currently required 1,500 hours TIS hydraulic fluid leakage inspection; and proposing to add a requirement to either install a new design servo actuator, Sikorsky part number (P/N) 76650–09805–111 (HR Textron P/N 3006760–111), or replace the servo actuator pistons, P/N 41004321 with P/N 41012001 or P/N 41012001–001, in servo actuators, Sikorsky P/N 76650–09805–109 and –110 (HR Textron P/N 3006760–109 and –110), either because of excessive leakage at the 1,500 or 2,250 hours TIS leakage inspection, or upon reaching the 3,000 hours TSN or TSO maintenance interval.

Regarding the comments in opposition to our proposal because of the cost, we agree that the initial proposal and these revised proposals would increase the operator's maintenance costs. While the total estimated cost amount of the impact contained in the economic evaluation in

this SNPRM is larger than that contained in the previous NPRM, those cost amounts are only estimates based on different assumptions that are difficult to project. We believe that the reduction in the proposed requirements in this SNPRM will result in an overall lesser adverse economic impact on operators. Economic consideration is not and cannot be the paramount consideration in AD actions. The overall safety benefits must be considered. ADs are issued to correct unsafe conditions, and to return the type certificate to the approved minimum level of safety.

Since we believe that the proposed leakage rate check and incorporation of the new servo actuator piston design are sufficient to address degraded servo actuator performance as a result of piston head seal leakage and plasma spray flaking, Copterline's proposed additional x-ray, ultrasonic, or other appropriate tests to verify adhesion of the piston plasma coating are not necessary, and would increase the operators' costs without an increased level of safety. Furthermore, we have determined, as previously mentioned, that we need to address degraded servo actuator performance due to internal leakage and piston head plasma spray flaking, which could potentially lead to loss of control of the helicopter. Therefore, we are revising the initial proposal to require only the leakage rate inspections and replacement of the servo actuators, Sikorsky P/N 76650–09805–109 and –110, with servo actuators, Sikorsky P/N 76650–09805–111, or replacement of servo actuator pistons, P/N 41004321, with P/N 41012001 or P/N 41012001–001, in Sikorsky servo actuators, P/N 76650–09805–109 and –110.

Copterline also states that inconclusive investigations into previous ''unsolved accidents'' involving Sikorsky Model S–70, S–76, and H–53 helicopters should be re-examined to determine if there is any relationship between those accidents and the more recent accident involving the Copterline helicopter that prompted issuing the NPRM.

We do not agree that additional review of previous accidents involving Sikorsky helicopter models is necessary. Investigations of previous Model S–76 helicopter accidents indicated no evidence of involvement of the servo actuators, therefore, we believe there is no relationship to the Copterline accident. Moreover, these servo actuators on those other Sikorsky model helicopters are significantly different in design, not susceptible to the same plasma flaking and seal leakage problems as the Model S–76 servo actuator, and would not provide useful information for evaluating the failure modes of the Model S–76 servo actuator.

Copterline expressed concern that the servo actuator does not meet the part 29 certification requirements to be a ''fail-safe component'', and that it was not designed for the situation in which both return ports are blocked, which could cause the servo actuator to jam. As previously noted, they cite the NTSB laboratory findings as evidence that this dual blockage occurred, leading to the accident. Copterline states that the manufacturer of the servo actuator or the helicopter must demonstrate and prove that the servo actuator is a fail-safe component and that the Model S–76 helicopter meets all the type certification requirements.

We disagree with Copterline's statement that the S–76 servo actuator does not meet part 29 certification requirements. The design of the affected Model S–76 helicopter servo actuator meets the fail-safe design regulatory requirements that were in effect at the time of initial certification of the Model S–76 helicopter. The inspection requirements of this revised proposal will assure that the Model S–76 servo actuator remains airworthy.

Copterline states that ''the FAA should require Sikorsky to make all Servo testing reports available without delay.'' Copterline also states that ''servo testing results and findings for cases where both return flow ports are blocked should be released immediately, if they exist.'' Also, Copterline states that the ''specially manufactured and modified servo used in the Sikorsky testing'' did not demonstrate conclusively what happened in the accident servo actuators. They further state that the Sikorsky testing does not establish that a servo actuator on the helicopter involved in the accident did not malfunction.

We agree with the comment that all testing results and findings should be released and to our knowledge, all relevant and requested FAA agency records have been made available. With respect to the comment that Sikorsky did not demonstrate conclusively what happened in the accident, the parties involved in the accident investigation have conducted extensive investigations to determine the cause of the accident. Although the Estonian authorities have released a final report identifying a cause of the accident, these parties have not and may not ever agree on the cause of the accident. As previously mentioned, the FAA has determined, based on further information obtained from the Copterline accident investigation and other test and service history data since we issued the NPRM, that a need exists to address degraded servo actuator performance due to internal leakage and piston head plasma spray flaking. This is reflected in this proposal.

Sikorsky states with respect to the accident, that the physical evidence does not support the theory that a mechanical malfunction of the servo caused the accident, and that it is physically impossible for the Model S–76 helicopter to perform these maneuvers without being influenced by an external force such as a waterspout. Copterline states Sikorsky's comment is incorrect when it states that it is physically impossible for the Model S–76 helicopter to perform the maneuvers recorded on its own even if the servo actuator malfunctioned, and cites the accident helicopter's flight data recorder (FDR) data as evidence that the accident helicopter stalled at 130 knots, and this stall is the external force that explains the maneuvers. They also state that if there had been any weather related cause to the accident, that it could have been read from the FDR data, and that there isn't any data to support Sikorsky's theory of a waterspout.

The weather data and laboratory test data are inconclusive. We have determined that the Model S–76 servo actuator pistons may experience piston head seal leakage and plasma spray flaking, and are proposing the 1,500 and 2,250 hours TIS leakage inspections and servo actuator replacement to address this unsafe condition.

Finally, Sikorsky, in a second comment, states that the comments submitted by the NTSB in response to the previously issued NPRM are inaccurate or inconsistent with physical evidence or recorded test data. Sikorsky states that the Sikorsky testing fully demonstrated that all flight loads can be sustained in a triple ''failure'' condition, and that a ''combined failure'' with high leakage rates (3 times the in-service allowable leakage), 100 percent blockage of one of the two C3 ports, and loads associated with high airspeeds (and more significantly, the entire certified flight spectrum), will not overpower the servo actuator. They further state that they have briefed the NTSB and FAA on results of these tests and maintain that the testing demonstrates that the servo actuator design is safe and robust.

As stated previously, the final report on the accident investigation has been released, and the parties involved in the investigation have not and may never agree on the cause of the accident. However, we have determined that there

is a need to require the servo actuator leakage rate inspections and replacing each affected servo actuator with a servo actuator containing a newly re-designed servo actuator piston to prevent degraded servo actuator performance as a result of piston head seal leakage and plasma spray flaking.

Since this proposal changes the scope and the requirements of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

We estimate that this proposed AD would affect 300 helicopters (900 servo actuators) of U.S. registry. We also estimate that the leakage rate inspection would take about 1 work hour per servo actuator at an average labor rate of $80 per work hour, and the two leakage rate inspections on 900 servo actuators would cost about $144,000. We estimate that 6 servo actuators, Sikorsky P/N 76650–09805–109 or -110, would need to be replaced with servo actuators, Sikorsky P/N 76650–09805–111. Assuming an estimated 8 work hours per servo actuator for installation and a cost of $57,000 per servo actuator, the total cost of installing these servo actuators would be $345,840. We estimate that the cost of replacing the pistons in the remaining 894 servo actuators would cost $7,259,280, assuming 14 work hours to replace the pistons and install the servo actuator, and a cost of $3,500 per piston (2 pistons per servo). Therefore, the total estimated cost of this proposal is $7,749,120.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2006–24587; Directorate Identifier 2006–SW–05–AD.

Applicability: Model S–76A, B, and C helicopters, with a main rotor servo actuator (servo actuator), Sikorsky part number (P/N) 76650–09805–109 or –110 (also marked as HR Textron P/N 3006760–109 or –110), installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect leaking in a servo actuator, which could lead to degraded servo actuator performance and subsequent loss of control of the helicopter, do the following:

(a) For a servo actuator with 1,500 or less hours time-in-service (TIS) since new (TSN) or TIS since overhaul (TSO), determine the leakage rate on or before reaching 1,500 hours TSN or TSO.

(b) For a servo actuator with 2,250 or less hours TSN or TSO, but more than 1,500 hours TSN or TSO, determine the leakage rate on or before reaching 2,250 hours TSN or TSO.

(c) If the leakage rate in any servo actuator exceeds 700 cc per minute when performing the leakage rate inspection specified in paragraph (a) or (b) of this AD, then:

(1) Replace that servo actuator piston, HR Textron P/N 41004321, with a servo actuator piston, P/N 41012001 or P/N 41012001–001, and re-identify the servo actuator on the servo actuator data plate as Sikorsky P/N ''76650–09805–111'' and HR Textron P/N ''3006760–111'' using a metal stamp method; or

(2) Replace the servo actuator with an airworthy servo actuator, Sikorsky P/N 76650–09805–111, HR Textron P/N 3006760–111.

(d) On or before 3,000 hours TSN or TSO, whichever occurs first, replace each servo actuator piston and re-identify the servo actuator as specified in paragraph (c)(1) of this AD or replace each servo actuator as specified in paragraph (c)(2) of this AD.

(e) Modifying and re-identifying each servo actuator as specified in paragraph (c)(1) of this AD or replacing each servo actuator as specified in paragraph (c)(2) of this AD is terminating action for the requirements of this AD for the modified and re-identified or replaced servo actuator.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: Terry Fahr, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on January 16, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–1688 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR–4998–N–03]

RIN 2501–AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Proposed Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the assistant to the President and Chief

of Staff, entitled ''Regulatory Review,'' published in the **Federal Register** on January 26, 2009 (74 FR 4435), HUD is seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled ''Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs'' published in the **Federal Register** on January 27, 2009 (74 FR 4832). This final rule revises HUD's public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies and owners and management agents. HUD is considering a temporary 60-day delay in the effective date to allow HUD officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff memorandum of January 20, 2009.

In addition, HUD takes this opportunity to address questions received subsequent to publication of the January 27, 2009, final rule pertaining to the provisions requiring the use of Social Security Numbers for determining program eligibility. HUD wishes to clarify that these requirements are not intended to apply to individuals, in mixed families, who do not contend eligible immigration status under HUD's noncitizens regulations, nor does it interfere with existing requirements relative to proration of assistance or screening for such families, or authorize their eviction or denial of admission on the basis of the new requirements pertaining to obtaining social security numbers.

HUD solicits comments specifically on the contemplated delay in effective date, but also generally on the rule entitled ''Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs.''

DATES: Comments must be received on or before March 13, 2009.

ADDRESSES: Interested persons are invited to submit comments. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Director of the Office of Public Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, telephone number 202–708–0744. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone number 202–402–2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: February 6, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–3004 Filed 2–9–09; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–147636–08]

RIN 1545–BI41

Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and Treasury Department are issuing temporary regulations under sections 304 and 1248 of the Internal Revenue Code (Code). The temporary regulations provide rules under section 367(a) and (b) that apply to certain transfers of stock by a United States person to a foreign corporation described in section 304(a)(1). The temporary regulations under section 1248(a) provide that, for purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation. The temporary regulations affect certain shareholders that transfer stock in a corporation to a foreign corporation in a transaction to which section 304(a)(1) applies, or that receive a distribution from a foreign corporation described in section 301(c)(3). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 12, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147636–08), room 5205, Internal Revenue Service, P.O.

Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147636–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–147636–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean W. Mullaney, (202) 622–3860; concerning submissions of comments or requests for a public hearing, *Richard.A.Hurst@irscounsel.treas.gov;* at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 304 and 1248 of the Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These regulations are necessary to ensure that the appropriate amount of income (dividend income, capital gain or both) is recognized currently in the transactions described in the explanation of provisions section in this preamble. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Comments are also requested regarding whether IRS and Treasury Department should exercise the regulatory authority under section 304(b)(6) to permit an increase to the basis of the transferred stock in a section 304(a)(1) transaction to the extent the distribution in redemption of the shares deemed issued by the acquiring corporation is treated as a dividend from the earnings and profits of the issuing corporation.

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.367(a)–9 also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(a)–9 is added to read as follows:

§ 1.367(a)–9 Treatment of deemed section 351 exchanges pursuant to section 304(a)(1).

[The text of proposed § 1.367(a)–9 is the same as the text of § 1.367(a)–9T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.367(b)–4 is amended by revising paragraphs (e), (f) and (g) to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(e) [The text of proposed § 1.367(b)–4(e) is the same as the text of § 1.367(b)–4T(e) published elsewhere in this issue of the **Federal Register**].

(f) [The text of proposed § 1.367(b)–4(f) is the same as the text of § 1.367(b)–4T(f) published elsewhere in this issue of the **Federal Register**].

(g) [The text of proposed § 1.367(b)–4(g) is the same as the text of § 1.367(b)–4T(g) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1248–1 is amended by revising paragraphs (b) and (g) to read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) [The text of proposed § 1.1248–1(b) is the same as the text of § 1.1248–1T(b) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text of proposed § 1.1248–1(g) is the same as the text of § 1.1248–1T(g) published elsewhere in this issue of the **Federal Register**].

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–2836 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–164370–05]

RIN 1545–BF27

Section 108(e)(8) Application to Partnerships; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking relating to the application of section 108(e)(8) of the Internal Revenue Code to partnerships and their partners.

DATES: The public hearing, originally scheduled for February 19, 2009, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing

Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Friday, October 31, 2008 (73 FR 64903), announced that a public hearing was scheduled for February 19, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 108 and 721 of the Internal Revenue Code.

The public comment period for these regulations expired on January 29, 2009. Outlines of topics to be discussed at the hearing were due on January 27, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, February 3, 2009, no one has requested to speak. Therefore, the public hearing scheduled for February 19, 2009, is cancelled.

Guy Traynor,

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

[FR Doc. E9–2830 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1016]

RIN 1625–AA87

Security Zone; Naval Base Point Loma; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the expansion of a naval security zone. This action would expand an existing security zone, which in doing so would encompass a nearby security zone in its entirety. The subsumed security zone would be removed. This action also proposes the installation of water barriers within the expanded security zone. These water borne barriers will provide a line of demarcation and a defensive measure as a safeguard from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. No persons or vessel may enter or remain in the security zone without the permission of the Captain of the Port, the Commander of Naval Base Point Loma, the Commander of Naval Region Southwest, or a designated representative of those individuals.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 13, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1016 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Commander Mike Dolan, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at 619–278–7261. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1016), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1016'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1016 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request

for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one 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 U.S. Navy is requesting an expansion of an existing security zone. The new zone will allow for installation of water barriers to provide a line of demarcation and defensive measure as a safeguard from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature. The expanded security zone would entirely subsume a nearby existing security zone, which would be removed.

Discussion of Proposed Rule

The Coast Guard proposes an expansion of an existing security zone in the San Diego Bay for U.S. Navy. The limits of the security zone would be as follows: The water adjacent to Naval Base Point Loma, San Diego, California, enclosed by the following coordinates:

Beginning at 32°42.48′ N, 117°14.21′ W (Point A); 32°42.48′ N, 117°14.17′ W (Point B); 32°42.17′ N, 117°14.00′ W (Point C); 32°41.73′ N, 117°14.21′ W (Point D); 32°41.53′ N, 117°14.23′ W (Point E); 32°41.55′ N, 117°14.02′ W (Point F); 32°41.17′ N, 117°13.95′ W (Point G); 32°41.04′ N, 117°14.14′ W (Point H); thence running generally north along the shoreline to the place of beginning (Point A).

This security zone is necessary to provide as a safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. No persons or vessel may enter or remain in the security zone without the permission of the Commander, Naval Base Point Loma; Commander, Naval Region Southwest; the Captain of the Port, or their respective designated representatives.

This proposed security zone would entirely overlap the existing security zone at 33 CFR 165.1103, which would be removed.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the size and location of the security zone. Vessels do not routinely operate for commercial purposes within the area proposed by the security zone expansion, which is currently within a charted restricted area (33 CFR 334.870). Additionally, vessel traffic may pass safely around the security zone.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay.

This security zone would not have a significant economic impact on a substantial number of small entities because vessel traffic may pass safely around the security zone.

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 Lieutenant Commander Mike Dolan, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at 619–278–7233. 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 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES.** 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 record keeping 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. Revise § 165.1102 to read as follows:

§ 165.1102 Security Zone; Naval Base Point Loma; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Base Point Loma, San Diego, CA, enclosed by the following coordinates:

Beginning at 32°42.48′ N, 117°14.21′ W (Point A); 32°42.48′ N, 117°14.17′ W (Point B); 32°42.17′ N, 117°14.00′ W (Point C); 32°41.73′ N, 117°14.21′ W (Point D); 32°41.53′ N, 117°14.23′ W (Point E); 32°41.55′ N, 117°14.02′ W (Point F); 32°41.17′ N, 117°13.95′ W (Point G); 32°41.04′ N, 117°14.14′ W (Point H); thence running generally north along the shoreline to the place of beginning (Point A).

(b) *Regulations.* (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Base Point Loma; or Commander, Navy Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278–7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Base Point Loma or the Commander, Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556–1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.

(c) *Definitions.* For purposes of this section:

Captain of the Port San Diego means the Commanding Office of the Coast Guard Sector San Diego.

Commander, Navy Region Southwest means Navy Region Commander responsible for the Southwest Region.

Commanding Officer, Naval Base Point Loma means the Installation Commander of the naval base located on Point Loma, San Diego, California.

Designated Representative means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

3. Remove § 165.1103.

Dated: December 22, 2008.

T.H. Farris,

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

[FR Doc. E9–2879 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 955

Rules of Practice of the Postal Service Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This document contains the rules of procedure of the Postal Service Board of Contract Appeals (Board) which will govern all proceedings before the Board. The Board was re-established by the National Defense Authorization Act for Fiscal Year 2006, to hear and decide contract disputes relative to a contract entered into by the United States Postal Service or the Postal Regulatory Commission. In addition the Board has jurisdiction over other matters assigned to it by the Postmaster General, and over matters otherwise authorized by applicable law. The Board intends to issue final, revised rules after considering all comments on the proposed rules.

DATES: Comments must be received on or before March 13, 2009.

ADDRESSES: Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Gary E. Shapiro, Board Member, (703) 812–1910.

SUPPLEMENTARY INFORMATION: The Postal Service Board of Contract Appeals was re-established by section 847 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163, 119 Stat. 3136), codified at section 8(c) of the Contract Disputes Act, 41 U.S.C. 607(c), to hear and decide contract disputes relative to a contract entered into by the United States Postal Service or the Postal Regulatory Commission.

These revised rules of procedure have the same general intent and coverage as the existing rules. However, the revised rules have been updated, are more comprehensive than the existing rules, and are intended to reflect more precisely actual practice in proceedings before the Board.

These revised rules will completely replace the existing rules of practice and once adopted as a final rule, will be effective for all appeals docketed by the Board on and after their effective date. While the language of the proposed rules may have changed considerably to enhance clarity and consistency, and to reflect more precisely the practices of the Board, we here identify the most significant changes of substance.

The proposed rules provide that the Board may consider the Federal Rules of Civil Procedure and the Federal Rules of Evidence, where appropriate, for guidance in construing its rules and in processing appeals.

The proposed rules provide that requests for extensions of time shall represent that the moving party has contacted the opposing party about the request, and indicate whether the opposing party consents to the extension, and if filed after the time for taking the required action has expired, indicate the reasons for the party's failure to have submitted the request timely.

The proposed rules require the filing party to serve complaints and answers upon the opposing party. The only documents that should not be served on the opposing party are simultaneous briefs. The proposed rules also allow for filing by fax but provide that the Board may determine not to extend a filing deadline solely because the Board's fax machine is busy or unavailable, or the fax is incomplete or illegible. The rules do not permit electronic filing at this time.

The proposed rules formalize Board precedent that notices of appeal may be filed either with the contracting officer or directly with the Board. Notices of appeal filed with the contracting officer are required to be forwarded by the contracting officer to the Board along with a copy of the contracting officer's final decision on which the appeal is based.

The proposed rules require Postal Service counsel to file the appeal file within thirty days from receipt by Postal Service counsel of the Board's docketing notice, a change from the existing rules that require filing within thirty days from the date the contracting officer receives notice of an appeal. Objections to appeal file documents are to be made at least ten days prior to a hearing or the date specified for settling the record. The proposed rules require the appellant to file the complaint within forty-five days after receipt of the notice of docketing, a change from the existing rules that require filing within thirty days after receipt of the notice of docketing. The proposed rules also formalize Board practice that the Board may order the Postal Service to file the complaint in appeals involving affirmative claims by the Postal Service.

The proposed rules specifically provide for summary judgment motions, and describe the requirements and limitations thereon.

The proposed rules formalize the Board's practices regarding discovery and the requirements and limitations that may be prescribed thereon. Procedures for the production of documents have been specified. Requirements for motions to compel discovery responses have been clarified.

The proposed rules clarify that hearings may be held at the Board's hearing room in Arlington, Virginia, or in another location convenient to the parties and witnesses. The proposed rules formalize the Board's practices regarding exclusion of witnesses at hearings. The proposed rules also provide that both parties will be provided transcripts or copies of proceedings without charge.

The proposed rules require an attorney who has filed a notice of appearance and who wishes to withdraw from a case to file a motion or notice identifying the person that will assume responsibility for the party in the appeal and the contact information therefor. The proposed rules detail the Board's sanction powers over parties and attorneys.

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Contract Disputes Act of 1978, Postal Service.

For the reasons stated in the preamble, the Postal Service proposes to revise 39 CFR Part 955 to read as follows:

1. Part 955 is revised to read as follows:

PART 955—RULES OF PRACTICE BEFORE THE POSTAL SERVICE BOARD OF CONTRACT APPEALS

Sec.

955.1 Jurisdiction, procedure, service of papers.
955.2 Notice of appeals.
955.3 Contents of notice of appeal.
955.4 Forwarding of appeals.
955.5 Preparation, contents, organization, forwarding, and status of appeal file.
955.6 Motions.
955.7 Pleadings.
955.8 Amendments of pleadings or record.
955.9 Hearing election.
955.10 Prehearing briefs.
955.11 Prehearing or presubmission conference.
955.12 Submission without a hearing.
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Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

§ 955.1 Jurisdiction, procedure, service of papers.

(a) *Jurisdiction for considering appeals.* Pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 601–613, the Postal Service Board of Contract Appeals (Board) has jurisdiction to consider and decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory

Commission relative to a contract made by either. In addition the Board has jurisdiction over other matters assigned to it by the Postmaster General, and over matters otherwise authorized by applicable law.

(b) *Organization and location of the Board.* (1) The Board is located at 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078. The Board's telephone number is (703) 812–1900, and its Web site is *www.usps.gov/judicial.* The Board's fax number is (703) 812–1901.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Judges of the Board, as appointed by the Postmaster General in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601–613. All members of the Board shall meet the qualifications established in the Contract Disputes Act. In general, appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

(c) *Board procedures*—(1) *Rules.* Appeals to the Board are handled in accordance with the rules of the Board.

(2) *Administration and Interpretation of Rules.* These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay. Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The Board may consider the Federal Rules of Civil Procedure for guidance in construing those Board rules that are similar to Federal Rules and for matters not specifically covered herein.

(3) *Time, computation, and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a federal holiday in which event the period shall run to the end of the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor, shall represent that the moving party has contacted the opposing party about the request, and shall indicate whether the opposing party consents to the extension. If the request for extension of time is filed after the time for taking the required action has expired, the request should indicate the reasons for the party's failure to have submitted the request before that time expired.

(4) Place of filings. Unless the Board otherwise directs, pleadings and other communications shall be filed with the Recorder of the Board at its office at 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078. Generally, and unless otherwise prescribed by law, rule or applicable Board order, the Board considers documents filed upon the earlier of receipt by the Recorder of the Board during the Board's working hours or, if mailed, the date mailed to the Board. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date of the postmark.

(5) Service of papers. Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of simultaneous briefs shall be filed directly with the Board for distribution and shall not be sent directly by the parties to each other. The party filing any other paper with the Board shall send a copy thereof to the opposing party, by an equally or more expeditious means of transmittal, noting on the paper filed with the Board, or on the transmitting letter, that a copy has been so furnished. The filing of a document by fax transmission occurs upon receipt by the Board of the entire legible submission by fax. The Board may determine not to extend a deadline for filing solely because the Board's fax machine is busy or otherwise unavailable when a filing is due.

§ 955.2 Notice of appeals.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken, or may be filed directly with the Board. The notice of appeal must be mailed or otherwise filed within the time specified by applicable law.

§ 955.3 Contents of notice of appeal.

(a) A notice of appeal from a contracting officer's decision should indicate that an appeal is thereby intended. It should identify the contract by number and identify the decision from which the appeal is taken, or it should attach a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide and/or attach a copy of the claim that the contracting officer has failed to decide, and explain that the contracting officer has failed to decide the claim as required.

(b) The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 955.4 Forwarding of appeals.

Upon receipt of a notice of appeal in any form, the contracting officer shall indicate thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board, and shall include a copy of the contracting officer's final decision if one has been issued. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be advised promptly of its receipt, and the contractor will be furnished a copy of these rules.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of the respondent.* Within 30 days from receipt of the Board's docketing notice, or such other period as the Board may order, the respondent's counsel shall file with the Board an appeal file consisting of all documents pertinent to the appeal and shall provide a copy to the appellant. The appeal file shall include:

(1) The claim and contracting officer's final decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to

the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file, the appellant shall supplement the appeal file by transmitting to the Board any documents not contained therein considered to be pertinent to the appeal, and shall furnish copies of such documents to Postal Service counsel.

(c) *Organization of appeal file.* Documents in the appeal file or supplement, as applicable, may be originals or legible copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents. Page numbering shall be consecutive and continuous from one document to the next, so that the complete file or supplement, as applicable, will consist of one set of consecutively numbered pages.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. The party filing with the Board a document as to which such a waiver has been granted, shall notify the other party at the time of filing that the document is available for inspection at the offices of the Board or of the party.

(e) Status of documents in appeal file. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document. Unless otherwise provided by Board order, any such objection shall be made at least 10 days prior to a hearing or the date specified for settling the record in the event there is no hearing on the appeal. If timely objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion may be afforded on application of either party. The Board may at any time and on its own motion raise the issue of its jurisdiction to proceed with a particular case.

(b) A motion filed in lieu of an answer shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by Board order. Any other dispositive motion shall be filed as soon as practicable after the grounds therefor are known.

(c) Motions for summary judgment may be considered by the Board. However, the Board may defer ruling on a motion for summary judgment, in its discretion, until after a hearing or other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with § 955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled *Statement of Uncontested Facts,* which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled *Statement of Genuine Issues.* This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

§ 955.7 Pleadings.

(a) *Appellant.* Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Should the complaint not be filed within the time required, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to constitute the complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant, and shall serve the appellant with a copy. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) *Affirmative claims by the respondent.* Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in § 955.7(a), and the appellant to file the answer as described in § 955.7(b).

§ 955.8 Amendments of pleadings or record.

(a) Upon its own initiative or upon application by a party, the Board may, in its discretion, order a party to submit a more definite statement of the complaint or answer, or to reply to an answer.

(b) When issues within the proper scope of an appeal, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they may be treated in all respects as if they had been raised in the pleadings. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, in its discretion the Board may admit the evidence and grant the objecting party a continuance or other relief if necessary to enable it to meet such evidence.

§ 955.9 Hearing election.

As directed by Board order, each party shall inform the Board, in writing, whether it desires a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is elected, the election should state where and when the electing party desires the hearing to be conducted and should explain the reasons for its choices. In appropriate cases, the appellant shall also state whether the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13 is elected.

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

§ 955.11 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.25, the Board may upon its own initiative or upon the application of either party, convene a conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the appeal.

(b) The results of the conference shall be reduced to writing by the Board and this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to § 955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs in accordance with § 955.24.

§ 955.13 Optional Small Claims (Expedited) and Accelerated Procedures.

(a) *The Small Claims (Expedited) Procedure.* (1) The Expedited Procedure is available solely at the election of the appellant. Such election requires decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) The appellant may elect this procedure when:

(i) There is a monetary amount in dispute and that amount is $50,000 or less, or

(ii) There is a monetary amount in dispute and that amount is $150,000 or less and the appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under the Act).

(3) In cases proceeding under the Expedited Procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any, within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the Expedited Procedure. If either party requests an oral hearing in accordance with § 955.9, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under § 955.18. If a hearing is not requested by either party, the appeal shall be deemed to have been submitted under § 955.12 without a hearing.

(4) Promptly after receipt of the appellant's election of the Expedited Procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated at the Board's discretion as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the Expedited Procedure. In so doing, the Board may reserve whatever time it considers necessary for preparation of the decision.

(5) Written decisions by the Board in cases processed under the Expedited Procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Judge. If there has been a hearing, the Judge presiding at the hearing may, in his or her discretion, at the conclusion of the hearing and after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under § 955.30.

(6) Decisions of the Board under the Expedited Procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(b) *The Accelerated Procedure.* (1) The Accelerated Procedure is available solely at the election of the appellant and shall apply only to appeals where there is a monetary amount in dispute and the amount in dispute is $100,000 or less. Such election requires decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) Promptly after receipt of the appellant's election of the Accelerated Procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the Accelerated Procedure.

(3) Written decisions by the Board in cases processed under the Accelerated Procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Judge with the concurrence of the Chairman or Vice Chairman or other designated Judge, or by a majority among these two and an additional designated member in case of disagreement. In cases where the

amount in dispute is $50,000 or less and in which there has been a hearing, the single Judge presiding at the hearing may, with the concurrence of both parties, convert the appeal to an Expedited Proceeding and at the conclusion of the hearing, after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.30.

(c) *Denial of election.* At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status make the election of the Expedited Procedure or the Accelerated Procedure inappropriate.

(d) *Motions for Reconsideration in Cases Arising Under § 955.13.* Motions for reconsideration of cases decided under either the Expedited Procedure or the Accelerated Procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(e) *General rule.* Except as herein modified, the rules of this Part 955 otherwise apply in all aspects.

§ 955.14 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(d) The Board may consider the Federal Rules of Evidence for guidance regarding admissibility of evidence and other evidentiary issues in construing those Board rules that are similar to Federal Rules and for matters not specifically covered herein.

§ 955.15 Discovery.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) The Board may limit the frequency or extent of use of discovery methods described in these rules. In doing so, generally the Board will consider whether: (1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or (3) the discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake. The parties are required to make a good faith effort to resolve objections to discovery requests informally. A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(c) If a party fails to appear for a deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories, requests for admission of facts, or requests for the production or inspection of documents, after proper service, the party seeking discovery may request that the Board impose appropriate rulings or sanctions.

§ 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 955.15.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request may be ordered by the Board as deemed admitted upon the failure of a party to respond timely and fully to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or things, to be answered within 30 days. Upon timely objection, the Board will determine the extent to which the requests must be satisfied, and if the parties cannot themselves agree thereon, the Board shall specify just terms and conditions of compliance.

§ 955.17 Depositions.

(a) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(b) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(c) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the

deponent is available to testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(d) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 955.18 Hearings—where and when held.

If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. At the discretion of the Board, hearings may be held in the Board's hearing room in Arlington, VA or may be held at another location with due consideration to the just, informal, expeditious and inexpensive resolution of each case.

§ 955.19 Notice of hearings.

The Board shall issue an order reasonably in advance of the hearing identifying the time and place thereof.

§ 955.20 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 955.12.

§ 955.21 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The Board may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or presentation of irrelevant, immaterial or cumulative evidence. Although the Board will consider the Federal Rules of Evidence as described in § 955.14(d), letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the Federal Rules, may be admitted in the discretion of the Board. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be accepted as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board shall otherwise order. If the testimony of a witness is not given under oath or affirmation, the Board may warn the witness that his or her statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof. Upon the request of either party or if the Board deems it advisable, the Board will exclude witnesses from the hearing room. The Board will not exclude a party who is an individual, the properly designated representative of a party which is an entity, a person whose presence is essential to the presentation of a party's case, or someone authorized by statute to be present.

§ 955.23 Copies of papers, withdrawal of exhibits.

(a) When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(b) After a decision has become final, upon request and after notice to the other party, the Board in its discretion may permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be ordered by the Board at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, submitted to the Board on a date established by the Board, following receipt of transcripts.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings will be provided to the parties by the Board.

§ 955.26 Representation of the parties.

(a) The term *appellant* means a party that has filed an appeal for resolution by the Board. An individual appellant may appear before the Board in his or her own behalf, a corporation may appear before the Board by an officer thereof, a partnership or joint venture may appear before the Board by a member thereof, or any of these may appear before the Board by an attorney at law duly licensed in any state, commonwealth, territory of the United States, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) The term *respondent* means the U.S. Postal Service. Postal Service counsel, who shall be an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia, designated by the General Counsel, will represent the interest of the Postal Service before the Board. Postal Service counsel shall file a written notice of appearance with the Board.

(c) References to contractor, appellant, contracting officer, respondent and parties shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

§ 955.27 Withdrawal of attorney.

Any attorney for either party who has filed a notice of appearance and who wishes to withdraw from a case must file a motion or notice which includes the name, address, telephone number, and fax machine number of the person who will assume responsibility for representation of the party in question.

§ 955.28 Suspension.

(a) Whenever at any time it appears that the parties are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's active docket.

(b) The Board may in its discretion suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's failure to render a timely decision, or for other good cause.

§ 955.29 Decisions.

Decisions of the Board will be made in writing and sent simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board, and may be made available on its official Web site and to commercial publishers. Decisions of the Board will be made solely upon the record, as described in § 955.14.

§ 955.30 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth

specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion. Arguments already made and reinterpretations of evidence generally are not sufficient grounds for granting reconsideration, or for altering or amending a decision.

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 955.32 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

§ 955.33 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

§ 955.34 Sanctions.

(a) All parties and their attorneys must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and attorneys. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings.

(b) If any party or its attorney fails to comply with any direction or order issued by the Board, or engages in misconduct affecting the Board, its process, or its proceedings, the Board may issue such orders as are just, including the imposition of appropriate sanctions. Sanctions may include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing or granting the case or any part thereof;

(7) Imposing such other sanctions as the Board deems appropriate.

(c) In addition, the Board may sanction individual attorneys for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his or her own initiative, the Board may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another convenient location as determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; or

(3) *Production of books and papers.* The production by a witness of books, papers, documents, electronically stored information, and other tangible and intangible things designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) To secure voluntary attendance of desired third-party witnesses, books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought, and/or where the production by a witness of books, papers, documents, electronically stored information, and other tangible and intangible things is sought; and

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought; except that

(iii) In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, electronically stored information, and other tangible and intangible things sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of compliance. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and where appropriate, to produce specified books, papers, documents, electronically stored information, and other tangible and intangible things at a time and place therein specified. In issuing a subpoena to a requesting party, the Judge shall sign the subpoena and may enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the

manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 955.36 Effective Dates and Applicability.

These revised rules govern proceedings in all cases docketed by the Board on or after a date determined by the Board.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–2843 Filed 2–10–09; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0079; 92210–1117–0000]

RIN 1018–AW18

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for submitting comments on our July 31, 2008 proposed revised designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on the proposed rule. Comments previously submitted for the proposed revised critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in any final decisions.

DATES: We will accept comments from all interested parties until March 13, 2009. Any comments received after the closing date may not be considered in the final decision on the revised designation of critical habitat.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R1–ES–2008–0079; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE, Suite 102, Lacey, WA 98503–1273, telephone (360) 753–9440, facsimile (360) 753–9008; Paul Henson, Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone (503) 231–6179, facsimile (503) 231–6195; or Michael Long, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone (707) 822–7201, facsimile (707) 822–8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, we request comments or suggestions on the proposed revised designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*).

We particularly seek comments concerning:

(1) The reasons why we should or should not revise currently designated critical habitat for the marbled murrelet by removing 254,070 ac (102,820 ha) from the 1996 designation, based on new information that is the best available information indicating that these areas do not meet the definition of critical habitat;

(2) Specific information on the amount and distribution of marbled murrelet habitat;

(3) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat revision, and in particular, any impacts on small entities;

(4) Our proposal to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from Brachyramphus marmoratus marmoratus to Brachyramphus marmoratus; and

(5) Whether we could improve or modify our approach to revising critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning the proposed revised designation of critical habitat for the marbled murrelet by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this 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.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed revised designation of critical habitat for the marbled murrelet, 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, Western Washington Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On May 24, 1996, we designated 3,887,800 acres (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. On July 31, 2008, we published a proposed rule in the **Federal Register** (73 FR 44678) to revise critical habitat for the marbled murrelet. Under the proposed revised designation of critical habitat, we would remove approximately 254,070 ac (102,820 ha) in northern California and Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. This action, if adopted in its entirety, would result in a revised designation of approximately 3,633,800 ac (1,470,550 ha) as critical habitat for the marbled murrelet. In the proposed rule, we also proposed a taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus.* We are reopening the comment period to accept peer review comments into the administrative record; however, all interested parties may submit comments and materials on the proposed revised designation of critical habitat for the marbled murrelet. Previously submitted comments for this proposed rule need not be resubmitted. Those comments have been incorporated into the public record and will be fully considered in our final determination.

Author

The primary authors of this document are the staff members of the Division of Endangered Species, Pacific Region, U.S. Fish and Wildlife Service.

Authority

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

Dated: February 4, 2009.

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9–2921 Filed 2–10–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0024; 92220–1113–0000–C6]

RIN 1018–AU96

Endangered and Threatened Wildlife and Plants; Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft post-delisting monitoring plan; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft post-delisting monitoring plan (draft PDM Plan) for the Hawaiian hawk (*Buteo solitarius*) and the reopening of the public comment period for the proposed rule to remove (delist) the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. If the proposed rule to delist the Hawaiian hawk is made final, we intend to monitor the hawk, in cooperation with the State of Hawaii and other conservation partners, through island-wide surveys every 5 years for a period of 20 years, from 2012 to 2032. We are soliciting review and comment on this draft PDM plan from local, State, and Federal agencies, and the public. We are also reopening the comment period on the proposed rule to ensure that the public has full access to the draft PDM Plan while commenting on the proposed rule.

DATES: Comments from all interested parties on the Hawaiian hawk draft PDM Plan and proposed rule must be received on or before April 13, 2009.

ADDRESSES: The draft PDM Plan may be downloaded from our Web site at *http://www.fws.gov/pacificislands.* To request a copy of the draft PDM Plan, write to our Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Rm. 3–122, Box 50088, Honolulu, Hawaii 96850; or call 808–792–9400, or send an e-mail request to *karen_marlowe@fws.gov*. Specify whether you want to receive a hardcopy by U.S. mail or an electronic copy by e-mail.

You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AU96; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Although you may request a copy of the draft PDM plan via e-mail or fax, we will not accept comments on the draft PDM or the proposed rule via e-mail or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, P.O. Box 50088, Honolulu, HI 96850; (telephone 808–792–9400). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We published the proposed rule to delist the Hawaiian hawk, due to recovery, on August 6, 2008, with a 60-day comment period that closed on October 6, 2008 (73 FR 45680). Several studies have shown that range-wide population estimates have been stable for at least 20 years and this species is not threatened with becoming endangered throughout all or a significant portion of its range in the foreseeable future.

Section 4(g)(1) of the ESA requires that we implement a system, in cooperation with the States, to effectively monitor, for not less than 5 years, the status of all species that have been recovered and delisted. Additionally, we are to make prompt use of the emergency listing authority under section 4(b)(7) of the ESA if the recovered species is presented with significant risk to its well being. In order to meet the ESA's monitoring requirements, and to facilitate that efficient collection of data, we have designed a draft plan to detect changes in the status of the Hawaiian hawk.

The Hawaiian hawk draft PDM Plan was developed in cooperation with the Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), the National Park Service (NPS), and the U.S. Geological Survey, Biological Resources Discipline (USGS–BRD). Our Pacific Islands Fish and Wildlife Office (PIFWO) will have the lead agency responsibility for this monitoring effort, and will coordinate

all phases of implementation of the plan and ensure that monitoring requirements outlined within the plan are accomplished. The draft PDM Plan proposes to conduct monitoring via island-wide variable circular plot (VCP) surveys every 5 years for a period of 20 years, from 2012 to 2032. Before conducting the VCP surveys, we intend to conduct a brief playback response study in 2010 to better define the hawk's response to call playbacks, which will lead to more accurate hawk density and population estimates. Details on the monitoring methods being proposed are available in the draft PDM plan (available online at: *http://www.fws.gov/pacificislands*).

Viewing Documents

Comments and materials we receive, as well as supporting documentation we used in preparing the draft PDM Plan and proposed rule, 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 Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96813 (808–792–9400).

Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. If you previously submitted comments on the proposed delisting rule, please do not resubmit them, as we have already incorporated them into the public record and will fully consider them in our final decision.

We also request comments on the Hawaiian hawk draft PDM Plan. We will take into consideration the substantive comments that we receive by the comment due date indicated above in the **DATES** section. These comments and any additional information received, may lead us to adopt a final PDM Plan that differs from this draft PDM Plan. Comments merely stating opposition to the draft PDM Plan without providing supporting data are not as helpful.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire document—including your personal identifying information—may be publicly available at any time. While you may request at the top of your document that we withhold this information from public review, we cannot guarantee that we will be able to do so.

Authority

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

Dated: February 2, 2009.

Kenneth Stansell,

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

[FR Doc. E9–2914 Filed 2–10–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 27
Wednesday, February 11, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, February 25, 2009 at the Okanogan Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting Provincial Advisory Committee members will receive information about the Climate Change initiative-adaptation strategies and the Access Travel Management Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Becki Heath, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: January 27, 2009.

Rebecca Lockett Heath,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. E9–2887 Filed 2–10–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders (M3).

Form Number(s): M–3(SD).

OMB Control Number: 0607–0008.

Type of Request: Extension of a currently approved collection.

Burden Hours: 17,200.

Number of Respondents: 4,300.

Average Hours per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Manufacturers' Shipments, Inventories, and Orders (M3) survey. This survey collects monthly data from domestic manufacturers on Form M–3 (SD), which is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector. The survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of backlogs of unfilled orders measures excess (or deficient) demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle.

This survey provides an essential component of the current economic indicators needed for assessing the evolving status of the economy and formulating economic policy. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) has designated this survey as a principal federal economic indicator. The shipments and inventory data are essential inputs to the gross domestic product (GDP), while the orders data are direct inputs to the leading economic indicator series. The GDP and the economic indicator series would be incomplete without these data. The survey also provides valuable and timely domestic manufacturing data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia.

The data are used for analyzing short- and long-term trends, both in the manufacturing sector and as related to other sectors of the economy. The data on value of shipments, especially when adjusted for change in inventory, measure current levels of production. New orders figures serve as an indicator of future production commitments. Changes in the level of unfilled orders, because of excess or shortfall of new orders compared with shipments, are used to measure the excess (or deficiency) in the demand for manufactured products. Changes in the level of inventories and the relation of these to shipments are used to project future movements in manufacturing activity. These statistics are valuable for analysts of business cycle conditions including members of the Council of Economic Advisers (CEA), the Bureau of Economic Analysis (BEA), the Federal Reserve Board (FRB), the Department of the Treasury, business firms, trade associations, private research and consulting agencies, and the academic community.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 131, 182, 193, and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 7845, 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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: February 5, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–2780 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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: Bureau of Industry and Security (BIS).

Title: Request to Initiate an Investigation under Section 232 of the Trade Expansion Act.

Form Number(s): None.

OMB Control Number: 0694–0120.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 400.

Average Hours per Response: 7 hours and 30 minutes.

Needs and Uses: Upon request, BIS will initiate an investigation to determine the effects of imports of specific commodities on the national security, and will make the findings known to the President for possible adjustments to imports through tariffs. The findings are made publicly available and are reported to Congress. The purpose of this collection is to account for the public burden associated with the surveys distributed to determine the impact on national security.

Affected Public: Business and other for-profit organizations; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 7845, 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 Jasmeet Seehra, OMB Desk Officer, *Jasmeet_Seehra@omb.eop.gov* or by fax to (202) 395–5167.

Dated: February 5, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–2783 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1601

Approval of Manufacturing Authority, Within Foreign–Trade Zone 64, Jacksonville, Florida, Bacardi USA, Inc. (Alcoholic Beverages)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Jacksonville Port Authority, grantee of Foreign–Trade Zone 64, has requested authority under Section 400.28(a)(2) of the Board's regulations on behalf of Bacardi USA, Inc., solely for the kitting of alcoholic beverages into gift sets (*i.e.*, does not involve authority for any type of manufacturing involving alcohol prohibited by the fifth proviso of section 81c of the FTZ Act) under FTZ procedures within FTZ 64 - Site 8, in Jacksonville, Florida (FTZ Docket 11–2008, filed 2/21/08);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 12374, 3/7/08);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for the kitting of alcoholic beverages into gift sets within FTZ 64 - Site 8 on behalf of Bacardi USA, Inc., as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of January 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–2929 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 4–2009]

Foreign–Trade Zone 271 Jo–Daviess and Carroll Counties, IL, Application for Subzone Status, Danisco U.S.A., Inc., Sweeteners Division, (Xylitol, Xylose and Mannose)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Jo- Carroll Foreign Trade Zone Board, grantee of FTZ 271, requesting special–purpose subzone status for the xylitol, xylose, and mannose manufacturing plant of Danisco U.S.A., Inc., Sweeteners Division (Danisco), located in Thomson, Illinois. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 4, 2009.

The Danisco facility (80 employees/154 acres/120,000 sq.ft.) is located at 10994 Three Mile Road (Carroll County), Illinois. The plant is used to produce xylitol (nutritive sweetener), xylose (xylitol precursor) and mannose (dietary supplement) (annual production capacity: 12,000, 9,500 and 50 tons, respectively) for export and the domestic market. The manufacturing process involves filtration, separation, evaporation, hydrogenation and crystallization using domestic and foreign material inputs. Materials that would be purchased from abroad (representing about 20% of finished product value) include: xylose (crystalline, ML), l–arabinose, galactose, mannose, rhamnose, separation resins (i.e., processing aids), and clamping bands (duty rate range: free 5.8%).

FTZ procedures would exempt Danisco from customs duty payments on the foreign materials used in export production (about 50% of annual shipments). On domestic shipments, the company could be able to elect the duty rate that applies to finished xylitol and D–Mannose (duty free) for the foreign material inputs noted above. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the

Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is April 13, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 2009.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: February 4, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–2933 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On September 9, 2008, the Department of Commerce published the preliminary results of the 2006/2007 administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China. The review covers two exporters. The period of review is August 1, 2006, through July 31, 2007. We invited interested parties to comment on these preliminary results.

Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3174 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2008, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC). See *Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282 (September 9, 2008) (*Preliminary Results*). The administrative review covers Dongguan Nozawa Plastics Products Co., Ltd., and United Power Packaging, Ltd. (collectively, Nozawa), Rally Plastics Co., Ltd. (Rally), and the PRC–wide entity.

We invited parties to comment on the *Preliminary Results*. On October 14, 2008, we received case briefs from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), and Nozawa. On October 20, 2008, we received rebuttal briefs from the petitioners and Nozawa. Because no party requested that the Department hold a hearing, we did not conduct a hearing prior to these final results of review. On December 18, 2008, we extended the deadline for completion of the final results of review. See *Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags From the People's Republic of China*, 73 FR 79442 (December 29, 2008).

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs, which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS).[1] This subheading may also cover products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates

In proceedings involving non–market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we treated the PRC as an NME country and found that Nozawa and Rally demonstrated their eligibility for separate–rate status. We received no comments from interested parties regarding the separate–rate status of these companies. Therefore, for these final results of review, we continue to find that the evidence placed on the record of this review by Nozawa and Rally demonstrates an absence of government control, both in law and in fact, with

[1] Until July 1, 2005, these products were classifiable under HTSUS 3923.21.0090 (Sacks and bags of polymers of ethylene, other). See Harmonized Tariff Schedule of the United States (2005) - Supplement 1 Annotated for Statistical Reporting Purposes Change Record - 17th Edition - Supplement 1, available at http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0510/0510chgs.pdf.

respect to their exports of the subject merchandise. Thus, we have determined that Nozawa and Rally are eligible to receive separate rates.

In the *Preliminary Results*, we found that Samson Plastic Manufactory Co. (Samson) did not demonstrate that it was separate from the PRC–wide entity. We received no comments from interested parties regarding our determination with respect to Samson. Therefore, for these final results of review, we continue to find that Samson is not separate from the PRC–wide entity and thus does not qualify for a separate rate.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as an NME country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. Also, we stated that we selected India as the appropriate surrogate country to use in this review because it is a significant producer of merchandise comparable to subject merchandise and it is at a level of economic development comparable to the PRC, pursuant to section 773(c)(4) of the Act. See *Preliminary Results*, 73 FR at 52284. No interested party commented on our designation of the PRC as an NME country nor the selection of India as the surrogate country. Therefore, we have continued to treat the PRC as an NME country and have used the same surrogate country, India, for these final results of review.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated February 4, 2009 (Decision Memo), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made several changes in our margin calculations. We have adjusted our surrogate financial–ratio calculations. Specifically, we have excluded ''Unloading Charges'' from the surrogate financial–ratio calculations. Additionally, we have included ''Chit Dividends/Losses'' in the surrogate financial–ratio calculations. Moreover, we have corrected several undisputed classification and clerical errors in our surrogate financial–ratio calculations. Finally, we have revised our calculation of Nozawa's freight–revenue offset cap. See Decision Memo.

Final Results of the Review

As a result of our review, we determine that the following final dumping margins exist for the period August 1, 2006, through July 31, 2007:

Manufacturer/Exporter	Margin (Percent)
Nozawa	3.19
Rally	25.10
PRC–wide Entity[2]	77.57

[2] The PRC-wide entity includes Samson.

Assessment Rates

Upon issuance of these final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of administrative review. For customers/importers of the respondents for which we do not have entered value, we have calculated customer/importer–specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. For customers/importers of the respondents for which we received entered–value information, we have calculated customer/importer–specific antidumping duty assessment rates based on customer/importer–specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1). For all companies in the PRC–wide entity, we will instruct CBP to apply a dumping margin of 77.57 percent to all entries of subject merchandise produced by these companies.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of this notice of final results of administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the publication as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 77.57 percent; (4) for all non–PRC exporters of subject merchandise the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. See *id*.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretaryfor Import Administration.

Appendix

1. Zeroing
2. Selection of Surrogate Financial Statements
3. Surrogate Financial–Ratio Calculations
4. Freight Revenue
5. Further–Manufacturing Cost Calculations
6. Inland–Freight Truck–Cost Calculation
7. Clerical Errors

[FR Doc. E9–2930 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Approval and Availability for the Revised Management Plan for the Chesapeake Bay Virginia National Estuarine Research Reserve.

SUMMARY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the Chesapeake Bay Virginia National Estuarine Research Reserve Management Plan Revision. Notice and an opportunity for public comment on the Revised Management Plan was first published in the **Federal Register** on November 5, 2008 (73 FR 65837).

Four sites along the York River comprise the Chesapeake Bay Virginia National Estuarine Research Reserve; Sweet Hall Marsh, Taskinas Creek, the Catlett Islands, and the Goodwin Islands. The four sites were designated as the Chesapeake Bay Virginia National Estuarine Research Reserve in 1991 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating in partnership with the Virginia Institute of Marine Science under a management plan approved in 1991. Pursuant to 15 CFR Section 92 1.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve. A boundary expansion, a revised geographic vision for the reserve, new facilities, and updated programmatic objectives are notable revisions to the 1991 approved management plan.

The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. This management plan describes how the strengths of the reserve will focus on four areas relevant to the Chesapeake Bay: Functions and linkages of land-margin ecosystems; ecosystem vulnerability to climate and human-induced stressors; water quality and aquatic stressors; and integrated ocean observing systems.

Since 1991, the reserve has added a coastal training program that delivers science-based information to key decision makers in the Chesapeake Bay; has completed a site profile that characterizes the reserve; and has expanded the monitoring, stewardship and education programs significantly. A new administrative building (2003) and a new science and education lab (2005) have been built to support the growth of reserve programs.

With the approval of this management plan, the Chesapeake Bay Virginia National Estuarine Research Reserve will change their total acreage from 2,849 acres to a new total of 2,705 acres. This change is attributable to boundary modifications at two of the reserve sites. At Sweet Hall Marsh, 189 acres of reserve property are being removed from the reserve boundary due to a change in ownership. At the Taskinas Creek site, 44.5 acres are being added to the reserve boundary to provide a deciduous and hardwood forest buffer to protect the estuarine areas used for research and education.

The 1991 Management Plan proposed a multi-phased expansion of the reserve that started with the four sites on the York River and planned to incorporate over 20 sites throughout Virginia to ensure adequate representation of Virginian estuarine areas important to the Chesapeake Bay. This expansion has not occurred since 1991. Due to the anticipated logistical, economic, and programmatic difficulties of having over 20 sites administered as part of the National Estuarine Research Reserve, the 2008 Management Plan focuses on the York River for the next five years.

FOR FURTHER INFORMATION CONTACT: Michael Miglion at (301) 563–1126 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Chesapeake Bay Virginia Management Plan revision, visit *http://web.vims.edu/cbnerr/index.htm*.

Dated: February 4, 2009.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E9–2818 Filed 2–10–09; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension of Comment Period for the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Northwest Training Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published by the U.S. Environmental Protection Agency in the **Federal Register** (73 FR 79473) on December 29, 2008 for the Northwest Training Range Complex (NWTRC) Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS). The public review period ends on February 11, 2009. This notice announces a seven-day extension of the public comment period until February 18, 2009.

FOR FURTHER INFORMATION CONTACT: Mrs. Kimberly Kler, Naval Facilities Engineering Command Northwest, Attention: NWTRC EIS/OEIS, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101; or *http://www.NWTRangeComplexEIS.com.*

SUPPLEMENTARY INFORMATION: The public comment period on the NWTRC Draft EIS/OEIS will be extended by seven days until February 18, 2009. Comments may be submitted in writing to Naval Facilities Engineering Command Northwest, Attention: Mrs. Kimberly Kler—NWTRC EIS/OEIS, 1101 Tautog Circle, Suite 203, Silverdale, WA 98315–1101. In addition, comments may be submitted online at *http://www.NWTRangeComplexEIS.com* during the comment period. All written comments must be postmarked by February 18, 2009, to ensure they become part of the official record. All comments will be addressed in the Final EIS/OEIS.

Copies of the Draft EIS/OEIS are available for public review at the following libraries:

1. Humboldt County Library, 1313 Third Street, Eureka, CA;
2. Jefferson County Rural Library, 620 Cedar Avenue, Port Hadlock, WA;
3. Kitsap Regional Library, 1301 Sylvan Way, Bremerton, WA;
4. Lincoln City Public Library, 801 SW Highway 101, Lincoln City, OR;
5. Oak Harbor Public Library, 1000 SE Regatta Drive, Oak Harbor, WA;
6. Port Townsend Public Library, 1220 Lawrence St., Port Townsend, WA;
7. Timberland Regional Library, 420 Seventh Street, Hoquiam, WA.

The NWTRC Draft EIS/OEIS is also available for electronic public viewing at: http://www.NWTRangeComplexEIS.com.

Dated: February 6, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2932 Filed 2–10–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Northeast Asia Subcommittee to the Chief of Naval Operations. The meeting will consist of presentations, briefs, and discussions of the following topics that have been classified at the SECRET Level: Current and future Navy strategy; plans, and policies in support of U.S. deterrence planning crisis management and conflict escalation and control in Northeast Asia. The executive session of this meeting will be closed to the public.

The discussion of such information would be exempt from public disclosure as set forth in section 552b(c)(5), (6), and (7) of title 5, United States Code. For this reason, the executive session of this meeting will be closed to the public.

DATES: The closed Executive Session will be held on March 11th, 2009 from 9:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846, Room 1A01. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: LCDR Eric Taylor, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, telephone: 703–681–4909.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting consists of discussions of classified information. The proposed closed session 9:30 a.m. to 12 p.m. will include a discussion involving future Navy strategy; plans, and policies in support of U.S. deterrence planning crisis management and conflict escalation and control in Northeast Asia. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public.

Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be closed to the public because it will be concerned with matters listed in sections 552b(c)(5), and (7) of the title 5, United States Code.

Dated: February 6, 2009.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2919 Filed 2–10–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 23, 2009. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 5–7, 2009.

Times

March 5: Committee Meetings

Assessment Development Committee: Open Session—12 noon to 2 p.m.

Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners: Open Session—2 p.m. to 4 p.m.

Executive Committee: Open Session—4:30 p.m. to 5 p.m.; Closed Session—5 p.m. to 6 p.m.

March 6

Full Board: Open Session—8:30 a.m. to 12 noon; Closed Session—12:30 p.m. to 1:30 p.m.; Open Session—1:30 p.m. to 4:30 p.m.

Committee Meetings

Assessment Development Committee: Open Session—9:45 a.m. to 12:15 p.m.

Committee on Standards, Design and Methodology: Closed Session—9:45 a.m. to 10:20 a.m. Open Session—10:20 a.m. to 12:15 a.m.

Reporting and Dissemination Committee: Open Session—9:45 a.m. to 12:15 p.m.

March 7

Nominations Committee: Closed Session—7:30 a.m. to 8:30 a.m.

Full Board: Closed Session—9:00 a.m. to 9:30 a.m.; Open Session—9:30 a.m. to 12 p.m.

Location: Mandarin Oriental Washington, DC, 1330 Maryland Avenue, SW., Washington, DC 20024

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On March 5, the Assessment Development Committee will meet in open session from 12 noon to 2:00 p.m. and the Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners will meet in open session from 2 p.m. to 4 p.m. Thereafter, the Executive Committee will meet in open session from 4:30 p.m. to 5 p.m. and in closed session from 5 p.m. to 6 p.m.

During the closed session the Executive Committee will receive a

briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering the 2008–2012 assessment years, based on funding for Fiscal Year 2009–2010. The discussion of contract options and costs will address the implications for congressionally mandated goals and adherence to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The second portion of the closed session of the Executive Committee is for discussion of personnel matters. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On March 6, the full Board will meet in open session from 8:30 a.m. to 9:15 a.m. The Board will approve the agenda and the November 2008 Board minutes. Following these actions, the oath of office will be administered to a new Board member. Thereafter, the Governing Board will receive a report from the Interim Executive Director of the Governing Board, and hear an update on the work of the National Center for Education Statistics (NCES).

On March 6, two of the Board's standing committees—the Assessment Development Committee and the Reporting and Dissemination Committee will meet in open session from 9:45 a.m. to 12:15 p.m.

On March 6, the Committee on Standards, Design and Methodology will meet in closed session from 9:45 a.m. to 10:20 a.m. and in open session from 10:20 a.m. to 12:15 p.m. During the closed session, the Committee will review proposed 12th Grade Preparedness Research Studies, independent government costs estimates for the studies, and projected timelines for contract awards. The information discussed in closed session will be essential to the Committee's recommendations regarding preparedness research studies to be implemented and the order of implementation. Public disclosure of information discussed would significantly impede implementation of the Governing Board's contracts and provide an undue advantage to potential bidders, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 6 from 12:30 p.m. to 1:30 p.m. the full Board will meet in closed session to receive a briefing on the NAEP 2008 Long Term Trends Report in Reading and Mathematics from the Associate Commissioner of NCES. The Governing Board will be provided with embargoed data on the report that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as premature disclosure of data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:30 p.m. to 2:30 p.m. the Board will participate in a panel discussion with former Board Chairs. From 2:45 p.m. to 3:45 p.m., the Board will receive an update on the work of the Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners. This session will be followed by an update from WestEd on the NAEP 2010 Technological Literacy Framework Project which is scheduled to take place from 3:45 p.m. to 4:30 p.m. The March 6 session of the Board meeting is scheduled to adjourn at 4:30 p.m.

On March 7, the Nominations Committee will meet in closed session from 7:15 a.m. to 8:30 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2009. The Committee will recommend a final slate of candidates for Board discussion and action. Following the Committee meeting, the full Board will meet in closed session from 9 a.m. to 9:30 a.m. to receive and discuss the final list of nominees to be submitted to the Secretary of Education for Board appointments. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on March 7 from 9:30 a.m. to 10 a.m. to discuss the future direction of NAEP and the Governing Board. From 10:15 a.m. to 12 p.m. the Board will receive and take action on Committee reports. The March 7, 2009 session of the Board meeting is scheduled to adjourn at 12 p.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may 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: *http://www.ed.gov/news/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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 5, 2009.

Mary Crovo,

Interim Executive Director, National Assessment Governing Board, U. S. Department of Education.

[FR Doc. E9–2880 Filed 2–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC09–725–000]

Commission Information Collection Activities (FERC–725); Proposed Collection; Comment Request; Extension

February 4, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) is

soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the information collection are due by April 14, 2009.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Web site (at *http://www.ferc.gov/docs-filing/elibrary.asp*). Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–725–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed, or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–725. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Michael Miller, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426. He may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–725 (''Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards'' (OMB Control No. 1902–0225)) is used by the Commission to implement the statutory provisions of Title XII, subtitle A of the Energy Policy Act of 2005 (EPAct 2005).[1]

The Electricity Modernization Act of 2005 was enacted into law as part of the Energy Policy Act of 2005 on August 8, 2005. Subtitle A of the Electricity Modernization Act amended the Federal Power Act (FPA) by adding a new section 215, titled ''Electric Reliability.'' Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the granting of new authority to provide for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO)[2] and reviewed and approved by FERC.

On February 3, 2006, the Commission issued Order No.672[3] certifying a single Electric Reliability Organization, the ERO, to oversee the reliability of the United States' portion of the interconnected North American Bulk-Power System, subject to Commission oversight. The ERO is responsible for developing and enforcing the mandatory Reliability Standards. The Reliability Standards apply to all users, owners and operators of the Bulk-Power System. The Commission has the authority to approve all ERO actions, to order the ERO to carry out its responsibilities under these statutory provisions, and to also as appropriate independently enforce Reliability Standards.

Once certified, the ERO must submit each proposed Reliability Standard to the Commission for approval. Only a Reliability Standard approved by the Commission is enforceable under section 215 of the FPA.

The ERO may delegate its enforcement responsibilities to a Regional Entity. Delegation is effective only after the Commission approves the delegation agreement. A Regional Entity may also propose a Reliability Standard to the ERO for submission to the Commission for approval. This Reliability Standard may be either for application to the entire interconnected Bulk-Power System or for application only within its own region.

The ERO or a Regional Entity must monitor compliance with the Reliability Standards. It will direct a user, owner or operator of the Bulk-Power System that violates a Reliability Standard to comply with the Reliability Standard. The ERO or Regional Entity may impose a penalty on a user, owner or operator for violating a Reliability Standard, subject to review by, and appeal to, the Commission.

Subtitle A of the Electricity Modernization Act of 2005 also includes two reliability-related provisions that are not part of the section 215 of the FPA. First section 1211(b) of the Act provides that the ERO certified by the Commission as well as Regional Entities are not departments, agencies or instrumentalities of the United States Government. Section 1211 (c) provides that federal agencies responsible for approving access to electric transmission or distribution facilities located on lands within the United States will, in accordance with applicable law, expedite any federal agency approvals that are necessary to allow the owners or operators of these facilities to comply with a FERC-approved Reliability Standard that pertains to vegetation management, electric service restoration, or resolution of situations that imminently endanger the reliability or safety of the facilities.

Order No. 672 set forth the criteria that an ERO applicant must satisfy to qualify as the ERO, including the ability to develop and enforce Reliability Standards.[4] The ERO submission must include an evaluation of the effectiveness of each Regional Entity. The Commission will, as part of its assessment of the ERO's performance, assess the performance of each Regional Entity and issue an order addressing Regional Entity compliance. If a Regional Entity fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider rescission of the Commission's approval of the Regional Entity's delegation agreement.

The Electricity Modernization Act of 2005 buttresses the Commission's efforts to strengthen the interstate transmission grid through the granting of authority pursuant to section 215 of the FPA which provides for a system of mandatory reliability rules developed by the ERO, established by the Commission, and enforced by the Commission, subject to Commission review.

A submission of the information is necessary for the Commission to carry

[1] Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005) (codified at 42 U.S.C. 16451, *et seq.*)

[2] ''Electric Reliability Organization'' or ''ERO'' means the organization certified by the Commission the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

[3] Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards ¶ 31,204 71 FR 8662 (2006) *Order on reh'g*, 71 FR 19,814 (2006), FERC Statutes and Regulations ¶ 31,212 (2006).

[4] The criteria stated in the Final Rule track the statutory criteria for ERO certification provided in section 215(c) of the FPA.

out its responsibilities under EPAct 2005.[5] The Commission implements its responsibilities through the Code of Federal Regulations, 18 CFR Part 39. These filing requirements are mandatory.

Action: The Commission is requesting a three-year extension of the current expiration date without any changes to the reporting requirements.

Burden Statement: The annual public reporting burden and cost for this collection are estimated as follows:

FERC–725[6]			FTE	Est. annual burden (hrs.)	Est. annual cost ($)
Annual NERC Costs	3 Year Self Assessment (Due 7/09)[7].	Contractor	3.33[7]	3,266.67[7]	350,000[7]
	Reliability Reporting Estimate[8]	Internal	1.5	2,940	210,663
	Estimate	Software	0	0	75,000
Total Annual NERC Costs			4.83	6,206.67	635,663
Annual RE Costs[9]	Reliability Reporting Estimate	Internal	4.5	8,820	519,840
	Estimate	Software	0	0	225,000
Total Annual RE Costs			4.5	8,820	744,840
Total Annual Burden & Cost Estimate			9.33	15,026.67	$1,380,503

The estimated annual total cost to respondents is $1,380,503[7,8,9] (including direct labor, overhead costs to prepare the application, and consultation to obtain specialized advice in responding to and implementing the certification application).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) training personnel to respond to an information collection; (4) searching data sources; (5) preparing and reviewing the information collection; and (6) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect or overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2868 Filed 2–10–09; 8:45 am]

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[5] 42 U.S.C. 16451 *et seq.*

[6] The burden and cost estimates do not include the cost of applying to become the ERO because that application process and the resulting FERC selection have been completed.

[7] Per Order 672, the ERO will undergo a performance assessment three years after certification (July 2009) and every five years thereafter. Therefore, the total figures for FTE (10), burden hrs. (9,800), and cost ($1,050,000) associated with doing the self-assessment have been divided by 3 to provide average annual figures for this notice.

The methodology for estimating the totals for the 3-year self assessment follows. Staff estimates that the self assessment will take 6 months to complete. In order for NERC to complete the work in half the time, we assume that NERC must hire double the workforce, so 10 contractors are used in the present calculation. The $1,050,000 was taken directly from NERC's 2009 Business Plan and Budget.

[8] NERC Employee Cost Estimate: NERC Employee Compensation Average is $140,442 (from 2009 Budget salary average). For 1.5 Employees, the Annualized Salary Expense is $210,663.

[9] Regional Entity (RE) Employee Cost Estimate: RE Employee Compensation Average of $115,520 (from 2009 Budget salary average). For 4.5 Employees, the Annualized Salary Expense is $519,840.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13314–000]

Corral Creek South Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

February 4, 2009.

On November 5, 2008, Corral Creek South Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Corral Creek South Pumped Storage Project to be located in Twin Falls County, Idaho on federal land administered by the Bureau of Land Management. The proposed project would be closed loop and would not be built on an existing body of water.

The proposed project would consist of: (1) An upper earthen dam with a height of 180 feet and a length of 8,400 feet; (2) an upper reservoir with a surface area of 118 acres, a capacity of 9,120 acre-feet, and a maximum pool elevation of 6,620 feet msl; (3) a lower earthen dam with a height of 200 feet and a length of 4,140 feet; (4) a lower reservoir with a surface area of 113

acres, a capacity of 10,880 acre-feet, and a maximum pool elevation of 5,500 feet msl; (5) a 30 foot diameter, 4,710 foot long penstock; (6) a powerhouse containing 10 pump/turbine units with a total installed capacity of 1,100 MW; (7) a 10.6 mile long, 500 kV transmission line and; (8) appurtenant facilities. The proposed project would have an annual production of 3,212 GWh which would be sold to a local utility.

Applicant Contact: Brent L. Smith, P.O. Box 535, Rigby, Idaho, 83442 (208) 745–0834

FERC Contact: Steven Sachs (202) 502–8666

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13314) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2869 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13316–000]

Mesa De Los Carros Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

February 4, 2009.

On November 5, 2008, Mesa De Los Carros Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mesa De Los Carros Pumped Storage Project to be located in San Miguel County, New Mexico. The proposed project would be closed loop and would not be built on an existing body of water.

The proposed project would consist of: (1) An upper earthen dam with a height of 88 feet and a length of 11,880 feet; (2) an upper reservoir with a surface area of 276 acres, a capacity of 10,394 acre-feet, and a maximum pool elevation of 6,900 feet msl; (3) a lower earthen dam with a height of 110 feet and a length of 9,662 feet; (4) a lower reservoir with a surface area of 396 acres, a capacity of 11,652 acre-feet, and a maximum pool elevation of 5,560 feet msl; (5) a 29 foot diameter, 9,000 foot long, steel penstock; (6) a powerhouse containing 10 pump/turbine units with a total installed capacity of 1,154 MW; (7) a 19.5 mile long, 500 kV transmission line and; (8) appurtenant facilities. The proposed project would have an annual production of 4,214 GWh which would be sold to a local utility.

Applicant Contact: Brent L. Smith, P.O. Box 535, Rigby, Idaho 83442; (208) 745–0834.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13316) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2871 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13320–000]

Mississippi L&D #25 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

February 4, 2009.

On November 3, 2008, Mississippi L&D #25 Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mississippi River Lock & Dam 25 Project to be located in Lincoln County, Missouri and Calhoun County, Illinois. The proposed project would utilize the existing U.S. Army Corps of Engineers Lock and Dam 25 on the Mississippi River.

The proposed project would consist of: (1) A powerhouse containing 4 turbine/generator units with a total installed capacity of 80.4 MW; (2) a 6.8 mile long, 34.5 kV transmission line and; (3) appurtenant facilities. The proposed project would have an annual production of 403 GWh which would be sold to a local utility.

Applicant Contact: Brent L. Smith, P.O. Box 535, Rigby, Idaho 83442; (208) 745–0834.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13320) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2873 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–000]

Swan Lake North Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

February 4, 2009.

On November 5, 2008, Swan Lake North Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Swan Lake North Pumped Storage Project to be located in Klamath County, Oregon on federal land managed by the Bureau of Land Management. The proposed project would be closed loop and would not be built on an existing body of water.

The proposed project would consist of: (1) An upper earthen dam with a height of 70 feet and a length of 11,850 feet; (2) an upper reservoir with a surface area of 260 acres, a capacity of 8,300 acre-feet, and a maximum pool elevation of 5,500 feet msl; (3) a lower earthen dam with a height of 80 feet and a length of 8,415 feet; (4) a lower reservoir with a surface area of 215 acres, a capacity of 8,820 acre-feet, and a maximum pool elevation of 4,200 feet msl; (5) a 29 foot diameter, 5,860 foot long, steel penstock; (6) a powerhouse containing 10 pump/turbine units with a total installed capacity of 1,144 MW; (7) a 12.5 mile long, 500 kV transmission line and; (8) appurtenant facilities. The proposed project would have an annual production of 3,340 GWh which would be sold to a local utility.

Applicant Contact: Brent L. Smith, P.O. Box 535, Rigby, Idaho, 83442 (208) 745–0834.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13318) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2872 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13315–000]

Yegua Mesa Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

February 4, 2009.

On November 5, 2008, Yegua Mesa Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Yegua Mesa Pumped Storage Project to be located in San Miguel County, New Mexico on federal land administered by the Bureau of Land Management. The proposed project would be closed loop and would not be built on an existing body of water.

The proposed project would consist of: (1) An upper earthen dam with a height of 94 feet and a length of 11,088 feet; (2) an upper reservoir with a surface area of 380 acres, a capacity of 9,868 acre-feet, and a maximum pool elevation of 6,800 feet msl; (3) a lower earthen dam with a height of 99 feet and a length of 5,597 feet; (4) a lower reservoir with a surface area of 380 acres, a capacity of 9,365 acre-feet, and a maximum pool elevation of 5,380 feet msl; (5) a 27 foot diameter, 9,690 foot long penstock; (6) a powerhouse containing 10 pump/turbine units with a total installed capacity of 1,100 MW; (7) a 14 mile long, 500 kV transmission line; and (8) appurtenant facilities. The proposed project would have an annual production of 3,993 GWh which would be sold to a local utility.

Applicant Contact: Brent L. Smith, P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13315) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2870 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 5, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–313–001.
Applicants: Ozark Gas Transmission, LLC.
Description: Ozark Gas Transmission, LLC submits three negotiated rate agreements between Ozark and Southwestern Energy Services Company.
Filed Date: 02/02/2009.
Accession Number: 20090203–0216.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP03–36–041.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits Forty Third Revised Sheet 9 to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 02/02/2009.
Accession Number: 20090203–0214.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP08–426–006.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Substitute Original Sheet 28H *et al.* to FERC Gas Tariff, Second Revised Volume 1A in compliance with the Commission's 1/1/09 order.
Filed Date: 01/21/2009.
Accession Number: 20090123–0378.
Comment Date: 5 p.m. Eastern Time on Monday, February 9, 2009.

Docket Numbers: RP00–426–041.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits First Revised Sheet 52 *et al.* to Third Revised Volume 1 & a Negotiated Rate Agreement.
Filed Date: 02/03/2009.
Accession Number: 20090204–0046.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP08–436–003.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, LLC submits Sub. Twentieth Revised Sheet 5 of its FERC Gas Tariff, First Revised Volume 1, to be effective 1/1/09.
Filed Date: 02/03/2009.
Accession Number: 20090204–0047.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP09–332–000.
Applicants: Enbridge Pipelines (Midla), L.L.C.
Description: Enbridge Pipelines, LLC submits Third Revised Sheet 111 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 3/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0104.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–337–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Second Revised Sheet 92 *et al.* to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 02/02/2009.
Accession Number: 20090203–0215.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP09–338–000.
Applicants: Portland Natural Gas Transmission System.
Description: Portland Natural Gas Transmission System submits First Revised Sheet 343 *et al.*, to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0213.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–339–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits Tenth Revised Sheet 324 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1 effective 3/5/09.
Filed Date: 02/03/2009.
Accession Number: 20090204–0048.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP09–340–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits Original Sheet 1 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 3/3/09
Filed Date: 02/03/2009.
Accession Number: 20090204–0052.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP09–341–000.
Applicants: Constellation Energy Commodities Group, Macquarie Cook Energy.
Description: Notice of Change of Ownership, Request for Temporary Waiver, Request for Expedited Action, and Request for Shortened Notice Period of Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.
Filed Date: 02/04/2009.
Accession Number: 20090204–5073.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9–2859 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 4, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–534–012.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Substitute First Revised Sheet 9A to its FERC Gas Tariff, Original Volume 1, to be effective 1/1/09.
Filed Date: 01/20/2009.
Accession Number: 20090123–0379.
Comment Date: 5 p.m. Eastern Time on Monday, February 9, 2009.

Docket Numbers: RP02–534–013.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Second Revised Sheet 9A to FERC Gas Tariff, Original Volume 1, to be effective 3/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0212.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–61–003.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits Amendments to Interim Negotiated Rate Agreements.
Filed Date: 01/30/2009.
Accession Number: 20090203–0020.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP96–383–091.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits Fifteenth Revised Sheet 1405 to FERC Gas Tariff, Third Revised Volume 1, to be effective 2/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0016.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP97–13–035.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits First Revised Sheet 35 *et al.*, to FERC Gas Tariff, Third Revised Volume 1, to be effective 2/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0211.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP99–518–109.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits Seventeenth Revised Sheet 24 *et al.*, to FERC Gas Tariff, Third Revised Volume 1–A, to be effective 2/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0012.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–314–000.
Applicants: Southern LNG Inc.
Description: Southern LNG Inc submits Twenty-Third Revised Sheet 5 *et al.*, to its FERC Gas Tariff, Original Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0017.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–316–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Company submits Thirteenth Revised Sheet 26 *et al.*, to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 3/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0018.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–322–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company submits First Revised Sheet 2A *et al.*, to FERC Gas Tariff, Second Revised Volume 1, to be effective 3/2/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–323–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits First Revised Sheet 28 to FERC Gas Tariff, Original Volume 2.
Filed Date: 02/02/2009.
Accession Number: 20090203–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: RP09–324–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits One Hundred Twenty Fourth Revised Sheet 9 to FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0096.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–325–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits Fifth Revised Sheet 604 to FERC Gas Tariff, Sixth Revised Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0097.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–326–000.
Applicants: EQUITRANS, LP.
Description: Equitrans, LP submits Thirteenth Revised Sheet 11 to FERC Gas Tariff, Original Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0098.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–327–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits Ninth Revised Sheet 8 *et al.*, to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0099.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–328–000.
Applicants: Garden Banks Gas Pipeline, LLC.
Description: Garden Banks Gas Pipeline, LLC submits Second Revised Sheet 104 *et al.*, to FERC Gas Tariff, Original Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0100.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–329–000.
Applicants: Mississippi Canyon Gas Pipeline, LLC.
Description: Mississippi Canyon Gas Pipeline, LLC submits First Revised Sheet 120 *et al.*, to FERC Gas Tariff, First Revised Volume 1, to be effective 3/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0101.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–330–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: Nautilus Pipeline Company, LLC submits Fifth Revised Sheet 174 *et al.*, to FERC Gas Tariff, Original Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–331–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, LLC submits Sixth Revised Sheet 148 *et al.*, to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 01/30/2009.
Accession Number: 20090203–0103.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–333–000.
Applicants: Enbridge Offshore Pipelines (UTOS) LLC.
Description: Enbridge Offshore Pipelines LLC submits Second Revised Sheet 141 *et al.*, to FERC Gas Tariff, Fifth Revised Volume 1.
Filed Date: 01/30/2009.
Accession Number: 20090203–0105.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–334–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company requests temporary waivers of certain tariff provisions and Commission Regulations for February 20 and 21, 2009.
Filed Date: 01/30/2009.
Accession Number: 20090203–0106.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–335–000.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits request for temporary waivers of tariff provisions and Commission Regulations.
Filed Date: 01/30/2009.
Accession Number: 20090203–0107.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–336–000.
Applicants: Enbridge Pipelines (AlaTenn), L.L.C.
Description: Enbridge Pipelines, LLC submits First Revised Sheet 130 *et al.*, to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 3/1/09.
Filed Date: 01/30/2009.
Accession Number: 20090203–0108.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09–337–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Second Revised Sheet 92 *et al.*, to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 02/02/2009.
Accession Number: 20090203–0215.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–2860 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–027]

PacifiCorp; Notice of Designation of Certain Commission Staff as Non-Decisional

February 4, 2009.

Commission staff member James Hastreiter (Office of Energy Projects (503) 552–2760; *james.hastreiter@ferc.gov*) is designated as ''non-decisional'' staff and is assigned to help resolve environmental and other issues associated with development of a settlement agreement for the Klamath Hydroelectric Project, and to help ensure compatibility of any offer of settlement or settlement agreement with Commission procedure and licensing process.

As ''non-decisional'' staff, Mr. Hastreiter will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application.

Different Commission ''advisory staff'' will be assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the settlement and the relicense application.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2874 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–398–002]

Gulf Crossing Pipeline Company LLC; Notice of Intent To Prepare An Environmental Assessment for the Proposed Mira Compressor Station Amendment and Request for Comments on Environmental Issues

February 4, 2009.

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 Mira Compressor Station

Amendment (Mira Amendment) involving construction and operation of facilities by Gulf Crossing Pipeline Company LLC (Gulf Crossing) in Caddo Parish, Louisiana.[1] 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 the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on March 6, 2009.

This notice is being sent to affected landowners; 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.

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 (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Gulf Crossing proposes to upgrade the two previously certificated turbine-compressor units at the Mira Compressor Station to larger turbine compressor units to increase the total horsepower of the Mira Compressor Station by 14,896. Gulf Crossing would install a new Solar Mars 100–15000S/C452 natural gas-fired turbine and a Solar Titan 130–20502S/C653 natural gas-fired turbine in place of the previous units for a total Station horsepower of 35,500. In addition, minor upgrades to the station's auxiliary facilities would be required.

The general location of the project facilities is shown in Appendix 1.[2]

If approved, Gulf Crossing proposes to commence construction of the proposed facilities in July 2009.

Land Requirements for Construction

All construction activities associated with the modifications to the Mira Compressor Station would be located within the previously certificated facility footprint. A total of 20 acres would be utilized during construction, and 10 acres would be retained within the fenced area of the compressor station.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed 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;
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local 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. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have identified potential impacts to air quality and a potential increase in noise impacts as two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Gulf Crossing. This preliminary list of issues may be changed based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Mira Amendment. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before March 6, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP07–398–002 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling

[1] On December 5, 2008, Gulf South filed its application with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notice of Application on December 16, 2008.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link 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. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

expert 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 on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the 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 a Commission 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 Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2866 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–1–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the 300 Line Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

February 4, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts that could result from the construction and operation of the 300 Line Project. The project is planned by Tennessee Gas Pipeline Company (TGP) to expand the natural gas transportation capacity of its existing 300 Line pipeline in Pennsylvania and New Jersey.

This Notice of Intent (NOI) announces the opening of the scoping process used to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. The staff will also use the scoping process to determine whether preparation of an environmental impact statement is more appropriate for this project based on the anticipated level of impacts. Please note that the scoping period will close on March 6, 2009.

Comments may be submitted in written or verbal form. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public scoping meetings scheduled as follows.

Date and time	Location
Tuesday, February 24, 2009, 7 p.m. (EST)	Walnut Ridge Primary School, 625 County Route 517, Vernon, New Jersey.
Wednesday, February 25, 2009, 7 p.m. (EST)	Montrose High School, 50 High School Road, Montrose, Pennsylvania.
Thursday, February 26, 2009, 7 p.m. (EST)	Mansfield University, Room G3, Allen Hall, 135 Stadium Drive, Mansfield, Pennsylvania.

Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of the meetings will be generated so that your comments will be accurately recorded.

This notice is being sent to affected landowners; federal, state, and local

government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We [1] encourage government representatives to notify their constituents of the 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 pipeline 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 Internet Web site (*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 Proposed Project

TGP is requesting authorization to construct, own, and operate the facilities necessary to increase natural gas delivery capacity to the northeast region of the United States by approximately 300,000 dekatherms per day. In addition to increasing natural gas delivery capacity in the region, TGP would also upgrade certain existing compressor units to improve overall system reliability.

The 300 Line Project would consist of the following facilities:

- Installation of approximately 128.4 miles of new 30-inch-diameter pipeline in seven separate looping [2] segments ranging in length from 14.6 miles to 22.5 miles in Potter, Tioga, Bradford, Susquehanna, Wayne, and Pike Counties, Pennsylvania; and Sussex and Passaic Counties, New Jersey;
- Construction of a new 15,000 horsepower (hp) compressor station (Station 303) in Venango County, Pennsylvania;
- Construction of a new 15,400 hp compressor station (Station 310) in McKean County, Pennsylvania;
- Modification to an existing meter station in Bergen County, New Jersey;
- Modifications to seven existing compressor stations in Potter (Station 313), Tioga (Station 315), Bradford (Station 317 and 319), Susquehanna (Station 321), and Pike Counties (Station 323), Pennsylvania, and Sussex County (Station 325), New Jersey, resulting in increased hp at five of the seven existing stations; and
- Installation of associated appurtenant aboveground facilities including mainline valves and pig [3] launchers and receivers.

The location of the project facilities is shown in Appendix 1.[4]

Land Requirements for Construction

Construction of the 300 Line Project would require about 2,091.7 acres of land including pipeline, aboveground facilities, appurtenant facilities, and pipe storage and contractor yards. Following construction, about 1,149.9 acres would be used for operation of the project facilities. The area disturbed during construction but not required for operation would generally be allowed to revert to pre-construction condition.

The planned pipeline loops would be located within and directly adjacent to the existing 300 Line right-of-way and at a typical offset of 25 feet from the existing pipeline to the extent practicable. Construction and operation of the two new compressor stations would occur within larger land tracts to be acquired by TGP, and the proposed modifications to existing compressor stations would occur within the existing fenceline of the facilities.

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 NOI, the Commission staff 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. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as 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 Process 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. In addition, representatives from the FERC participated in public open houses sponsored by TGP in the project area in December 2008 and January 2009, to explain the environmental review process to interested stakeholders.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the

[1] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[2] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link 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. Copies of the appendices were sent to all those receiving this notice in the mail.

Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this NOI, we are asking federal, state, and local 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. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities, comments made to us at TGP's open houses, preliminary consultations with other agencies, and the environmental information provided by TGP. This preliminary list of issues may be changed based on your comments and our analysis:

- Compatibility with the Wallkill River National Wildlife Refuge in Sussex County, New Jersey, where proposed Loop 325 would cross the refuge for approximately 0.8 mile;
- Compatibility of the planned Loop 325 on lands under jurisdiction of the New Jersey Highlands Council;
- Potential impacts on nearby residences including wells and septic systems, land use restrictions, and property values;
- Aesthetic impacts, including the loss of trees in residential areas;
- Potential impacts on threatened or endangered species including the Indiana bat and the Bog turtle;
- Noise concerns associated with the new compressor stations (Stations 303 and 310); and
- Assessment of alternatives including alternatives that would avoid or reduce impacts on the Wallkill River National Wildlife Refuge and Long Pond Iron Works State Park, and alternative compressor station locations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the 300 Line 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 in your comments so that they will be received in Washington, DC on or before March 6, 2009.

For your convenience, there are three methods you can use to submit your written comments to the Commission. In all instances please reference the project docket number PF09–1–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert 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 on the Commission's internet Web site at *www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) *You may file your comments via mail to the Commission by sending an original and two copies of your letter to:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Becoming an Intervenor

Once TGP formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the 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 a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''eFiling'' link on the Commission's Web site. Please note that you may not request intervenor status at this time; you must wait until the formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, to request additional information on the project or to provide comments directly to the project sponsor, you can contact TGP directly be calling toll free at 1–866–208–3676. Also, TGP has established an Internet Web site at *www.elpaso.com/TGP300LineExpansion/default.shtm.* The Web site includes a description of the Project, an overview map of the

proposed facilities, and links to related documents. TGP will update the Web site as the environmental review of its project proceeds.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2865 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC09–34–000]

Cameron Interstate Pipeline Company, LLC; Notice of Filing

February 4, 2009.

Take notice that on January 22, 2009 Cameron Interstate Pipeline Company, LLC submitted a request for waiver of the requirement to submit the 2008 FERC Form No. 2 and a temporary waiver of the requirement to submit the FERC Form 3–Q under sections 260.1 and 260.300 of the Commission regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2875 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–55–000]

Carolina Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 4, 2009.

Take notice that on January 30, 2009, Carolina Gas Transmission Corporation (Carolina Gas), 601 Old Taylor Road, Cayce, South Carolina 29033, filed in Docket No. CP09–55–000, an application pursuant to sections 157.205 and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to convert an existing compressor unit from standby to base load service, under Carolina Gas' blanket certificate issued in Docket No. CP06–72–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Carolina Gas proposes to convert an existing standby 1,050 horsepower Solar Saturn turbine compressor unit to base load service at its Grover compressor station near Blacksburg, Cherokee County, South Carolina. Carolina Gas states that converting the standby compressor unit to base load service would allow Carolina Gas to meet shippers' request for an additional 25,000 Dekatherms per day of natural gas service. Carolina Gas also states that it would cost an estimated $413,000 to place the compressor unit into base load service.

Any questions concerning this application may be directed to Samuel L. Dozier, Vice President, Commercial and Field Operations, Carolina Gas Transmission Corporation, 601 Old Taylor Road, Cayce, South Carolina 29033, or via telephone at (803) 217–2234.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2867 Filed 2–10–09; 8:45 am]

BILLING CODE 6717–01–P

[1] 116 FERC ¶ 61,049 (2006).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0707; FRL–8772–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs (Renewal); EPA ICR No. 1613.03, OMB Control No. 2060–0252

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 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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 13, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0707, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: 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: Dave Sosnowski, Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4823; fax number: 734–214–4052; e-mail address: *sosnowski.dave@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 October 1, 2008 (73 FR 57095), 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 No. EPA–HQ–OAR–2008–0707, which is available for online viewing at *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 Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *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 *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 *www.regulations.gov.*

Title: Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs (Renewal).

ICR number: EPA ICR No. 1613.03, OMB Control No. 2060–0252.

ICR status: This ICR is scheduled to expire February 28, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, 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: To provide general oversight and support to state and local I/M programs, the Transportation and Regional Programs Division (TRPD), Office of Transportation and Air Quality, Office of Air and Radiation, U.S. Environmental Protection Agency, requires that state or local program management for both basic and enhanced I/M programs collect two varieties of reports. The first reporting requirement is the submittal of an annual report providing general program operating data and summary statistics, addressing the program's current design and coverage, a summary of testing data, enforcement program efforts, quality assurance and quality control efforts, and other miscellaneous information allowing for an assessment of the program's relative effectiveness; the second is a biennial report on any changes to the program over the two-year period and the impact of such changes, including any weaknesses discovered and corrections made or planned.

General program effectiveness is determined by the degree to which a program misses, meets, or exceeds the emission reductions committed to in the state's approved State Implementation Plan (SIP), which, in turn, must meet or exceed the minimum emission reductions expected from the relevant performance standard, as promulgated under EPA's revisions to 40 CFR part 51, in response to requirements established in section 182 of the Clean Air Act Amendments of 1990. This information will be used by EPA to determine a program's progress toward meeting requirements under 40 CFR part 51, as well as to assess national trends in the area of basic and enhanced I/M programs and to provide background information in support of periodic site visits and evaluations.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 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: State government agencies or departments responsible for oversight and operation of the I/M programs.

Estimated total number of potential respondents: 34.

Frequency of response: Annual and Biennial.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,890 hours.

Estimated total annual costs: $152,252, which includes no annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: February 5, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–2912 Filed 2–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0008; FRL–8402–5]

Tribal Pesticide Program Council (TPPC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 2-day meeting beginning on Thursday, March 12, 2009 and ending on Friday, March 13, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 12, 2009, from 9 a.m. to 5 p.m. and March 13, 2009 from 9 a.m. to 5 p.m. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Activities and Recreation Center, Ballroom A, University of California, Davis, CA (UC-Davis). For directions to, or information about, the meeting facility only, call UC-Davis at (530) 754–5306.

FOR FURTHER INFORMATION CONTACT: Kristen Hendricks, Field and External Affairs Division, Office of Pesticide Programs (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0308; fax number: (703) 308–1850; e-mail address: *hendricks.kristen@epa.gov*; or Lillian Wilmore, TPPC Administrator, 1595 Beacon St. #3, Brookline, MA 02446–4617; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: *NAEcology@aol.com*. For information about the TPPC, please see *http://www.epa.gov/oppfead1/tribes/tppc.htm.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be interested in this meeting if you are interested in the TPPC's information-exchange relationship with EPA regarding important issues in Indian country related to human and environmental exposure to pesticides and insight into EPA's decision-making process. All parties are invited and encouraged to participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0008. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA, 22202. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Tentative Agenda

1. TPPC State of the Council Report.
2. Tribal reports and presentations.
3. OPP updates.
4. Updates from EPA's Office of Enforcement and Compliance Assurance.
5. Circuit rider programs.
6. EPA Region and Regional Sub-lead reports.
7. Report and discussion on the use of restricted-use pesticides in Indian Country.
8. Update on EPA OPPTS Strategic Planning.
9. Tribal Caucus (TPPC Only).

List of Subjects

Environmental protection, Tribes, Pesticides.

Dated: February 4, 2009.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. E9–2761 Filed 2–10–09; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the board of directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, February 12, 2009 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Resolution presented to Howard A. Schweitzer General Counsel upon his resignation.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Kamil P. Cook,

Acting General Counsel.

[FR Doc. E9–2815 Filed 2–10–09; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket 07–269; FCC 07–207]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the next competition report that is to be submitted to Congress. Comments and data submitted by parties will be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Interested parties may file comments on or before February 27, 2009, and reply on or before March 27, 2009.

ADDRESSES: You may submit comments, identified by MB 07–269, by any of the following methods:

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

• *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/efcs/*. Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dana Scherer, Media Bureau at (202) 418–2330.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry (NOI)* in MB Docket No. 07–269, FCC 07–207, adopted November 27, 2007, and released January 16, 2009. The complete text of this *NOI* is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Room CY–A257, Portals II, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the *NOI* may also be purchased from the Commission's duplicating contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or by e-mail *fcc@bcpiweb.com*, or via its Web site *http://www.bcpiweb.com*.

Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry (NOI)* solicits data and information for the Commission's 14th annual report. We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the marketplace between 2006 and 2007, prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.

2. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised to ensure the accuracy and usefulness of this Report. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants and will do so again if necessary. Nevertheless, we are concerned that such publicly available information may not be adequate, especially when various sources provide inconsistent data.

Competition in the Market for the Delivery of Video Programming

3. We ask commenters to provide data on video programming distributors, including cable systems; direct broadcast satellite (DBS) services; large home satellite dish (C-Band) providers; broadband service providers (BSPs); private cable operators (PCO), also called satellite master antenna television systems; open video systems (OVS); wireless cable systems using frequencies in the broadband radio and educational broadband services; local exchange carrier (LEC) systems; utility-operated systems; commercial mobile radio services (CMRS) and other wireless providers; and over-the-air broadcast television stations. In addition, we seek information on video programming distributed over the Internet and via Internet Protocol (IP) networks. We also seek information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services. We continue to seek comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets and provide insight into factors affecting video competition. Where possible and relevant, we request data as of June 30, 2007.

4. We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including:

(a) The number of homes passed by each wired technology;

(b) the number of homes capable of receiving service via each wireless technology;

(c) the number of subscribers and penetration rates for cable services, including basic cable service tier (BST), cable programming service tier (CPST), themed tiers (*e.g.*, family tiers, foreign-language tiers), digital cable service, digital tiers, a la carte services, pay-per-view (PPV), and video-on-demand (VOD);

(d) for noncable MVPDs, the number of subscribers and penetration rates for each available programming tier, a la carte services, PPV, and VOD;

(e) how such cable penetration/subscription rate numbers were derived, and whether the party providing the data considers it a representative sample of the overall cable industry;

(f) available channel capacity of the system; the number, type, and identity of video programming channels offered, the channel capacity required for such offerings and the tier or tiers on which such programming is offered; and the channel capacity of the system used for non-video services;

(g) prices charged for various programming packages and the equipment required to receive them;

(h) industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures;

(i) information on how video programming distributors compare in terms of relative size and financial resources;

(j) data that measure the audience reach of video programming networks as well as relative control over the video distribution market; and

(k) information on video distributor expansion into new markets, such as local telephony, high-speed Internet access, wireless telephone service, the percentage of subscribers taking these services, and the competitive advantages of offering these services, as well as information on new technologies being considered, tested, or deployed by MVPDs for video, voice, and data offerings.

5. We are interested in data and information on the number of homes that have a choice of MVPD services. How many households can receive service from one or more providers (*e.g.*, DBS, wireless cable, PCO) as well as an incumbent cable provider? How many consumers have access to wireline overbuilders? We also want to identify where wireless competition exists, where is entry likely in the near future, and where wireline competition once existed but failed. What effect has competition among MVPDs had on consumers (*e.g.*, prices, programming choices, quality of service, and the

introduction of video and non-video advanced services)?

6. To evaluate substitution between MVPD technologies, we seek data on the relative prices of similar services offered by different types of competitors. Many cable operators offer or plan to offer bundled service packages, such as video, voice, and high-speed data, as do other MVPDs. What effect does bundling have on head-to-head competition, and what effect does it have on MVPDs that do not offer bundled services due to technical or other limitations? We are interested in investigating methods for measuring and comparing bundled service packages, such as video, voice, and high-speed data, among MVPDs.

7. Barriers to entry can be regulatory, technological, or financial in origin. We seek to understand what these barriers are and how they impede competition in the MVPD marketplace. Are there any existing Commission regulations or statutory provisions that prevent new entrants from promptly deploying their networks and offering consumers new video service options? Are there steps that Congress and the Commission may take to encourage investment in new broadband networks? We seek comment on what modifications, if any, are needed to pertinent regulations or statutes to foster competition in the deployment of broadband networks and the provision of video services.

8. We request detailed information about nonbroadcast programming networks, including ownership, the type of programming networks (*e.g.*, national, regional, local) and the genre of programming networks (*e.g.*, sports, news, children's, general entertainment, foreign language). We seek information about the proportion of national nonbroadcast networks that are vertically integrated with a cable operator. We also seek to identify programming networks affiliated with broadcast television station licensees not owned by a cable operator; and programming networks that are owned by MVPDs other than cable operators (*e.g.*, DBS operators). How does the counting of international networks affect the calculation of the proportion of networks that are vertically integrated? We note that programming networks are being offered in a variety of forms (*e.g.*, multiplexed networks, VOD, shared channels), and we seek comment on whether and how to count such programming networks for assessing trends in vertical integration. We ask commenters to provide information regarding the delivery mode (*i.e.*, satellite delivery, terrestrial delivery) of each national and regional network as we are unaware of any comprehensive source of this information.

9. We request information on children's, locally-originated, and local news and community affairs programming distributed to consumers by broadcasters and MVPDs. To what extent is programming offered in languages other than English, nationally and locally? How is such programming packaged (*i.e.*, part of CPST, digital tier, separate tier)? We also seek comment regarding public, educational, and governmental (PEG) access, including the number of channels currently being used by cable operators for this purpose. We ask for information on the programming provided by DBS operators in compliance with their public interest obligation. We also request information on the use of leased access channels and the types of programming distributed on them, and seek comment on whether these channels provide an opportunity for independent programmers to distribute their programming.

10. We seek comment on programmers' access to MVPDs, including comment on the effectiveness of the program carriage and channel occupancy rules. We request information on the number of independent networks that launched between June 2006 and June 2007, including total subscribers; the distributors that carry them; the manner of carriage (*e.g.*, expanded basic, digital tier, themed digital tier, VOD); and their ongoing efforts to obtain further distribution by cable, DBS, and other service providers. Specifically, we request comment regarding any difficulties programming networks encounter when launching a new service and information on the kinds of carriage arrangements that are required to secure MVPD carriage.

11. We seek information on how video programming distributors package and market their programming. To what extent are MVPDs offering programming on an a la carte basis or in mixed bundles, themed tiers, and subscriber-selected tiers? We seek information on family friendly programming, including the cost and content of these packages. Are family tiers offered on a stand-alone basis or must consumers subscribe to other tiers (*e.g.*, basic service tier, digital tier) to receive them? Do subscribers need additional equipment to receive the family tier? Do MVPDs offer or plan to offer consumers more choice in channel selection, specifically a la carte or themed tiers, rather than traditional tiering of programming services?

12. We seek to assess the extent to which MVPDs have been able to acquire or license programming owned by other video distributors. Is there specific programming, national or regional/local, that is unavailable to either cable or noncable operators and, if so, why? What effect does vertical integration have on competing distributors' ability to obtain programming? Are there certain ''must-have'' programming services, or genres of services (*e.g.*, regional sports) without which competitive video service providers may find themselves unable to compete effectively?

13. We request comment on the effectiveness of our program access rules. What, if any, video programming services that were once delivered to MVPDs by satellite have been migrated to terrestrial delivery? Which terrestrially delivered networks are unavailable to some MVPDs under the so-called terrestrial exemption to the Commission's program access rules? To what extent are terrestrially delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? What exclusive programming arrangements exist between programmers and MVPDs? With the advent of VOD, what are the competitive implications of video programming distributors securing exclusive rights to programming for inclusion in their VOD offerings?

14. We request comment on competition issues specific to video programming distribution in rural and smaller markets, including the number of MVPDs serving small and rural markets, their subscribership, the services and video programming options they offer, the technology used to provide their services, and the cost for such video services. How does competition differ between rural and smaller markets and larger, urban areas? We seek information on alternative technologies, such as digital subscriber line (DSL) and fiber-based Internet Protocol television (IPTV) that small and rural operators are adopting. We seek information on any existing differences in program carriage agreements between larger urban systems and those in small or rural areas, including information on whether video programming buying cooperatives help small or rural operators obtain programming at discounted rates.

15. We also seek specific information regarding MVPD service available in Alaska and Hawaii. We are interested in whether, and how, cable, DBS, and other MVPD services offered in these

states differ from that provided in other states. What competitive alternatives are available to consumers in Alaska and Hawaii? How do prices for the various packages of service compare to the average national price for such MVPD services? We also seek information on any differences in the equipment needed by consumers to receive video programming service.

16. We seek comment on any factors that are unique to competition in multiple dwelling units (MDUs). How common is it for consumers to have choices among video programming services within MDUs?

17. We also invite commenters to provide information on access to programming by persons with disabilities. We seek comment on what, if any, concerns industry and the public have with meeting these increased captioning requirements for new Spanish language and ''pre-rule'' English language programming. We also seek information on the level and quality of captioning for non-English language programming. We seek information on the quality, accuracy, placement, technology, and any instances of missing or delayed captions, and the amount of digital programming that contains closed captions translated from analog closed captions. We seek comment on the extent to which digital programming may not be captioned and ask why this is the case. We seek information on the availability of video description services, currently provided by programmers on a voluntary basis and the amount and types of video programming that includes video descriptions and whether MVPDs generally carry video descriptions inserted by programmers.

Cable Television Service

18. For the 14th annual report, we seek updated information on the performance of the cable television industry. We request information regarding cable operators' continuing investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We request information on the development of various methods or technologies to increase system capacity, such as switched digital video technology.

19. For individual cable multiple system operators (MSOs), we request information on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), the number of systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. To what extent is new capacity used for non-video services? How have the structure and price of service tiers changed when systems become all digital? How would they change in the future as more systems become all digital? What are the implications for customer premises equipment?

20. We seek information on mergers and other cable system transactions that occurred between June 2006 and June 2007, including the names of the buyer and seller, date of the transaction, type of transaction (*i.e.*, sale or swap), name and location of the system, homes passed and number of subscribers, and the price. We request data regarding the effect of clustering (the practice whereby operators concentrate their operations in specific geographic areas) on competition in the video programming distribution market.

21. We seek information on whether and how cable operators are changing the way they package programming and the role actual or potential competition played in any such changes. Do cable operators offer, or plan to offer, digital programming genre packages or themed tiers (*e.g.*, family, sports, lifestyle themed tiers) or programming on an a la carte basis? We request data on the programming included on these tiers and their cost, including information on whether subscribers must purchase other tiers in order to subscribe to themed tiers or to purchase channels on an a la carte basis.

22. Section 612(g) of the Communications Act provides that when cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. We previously concluded that the first prong of the test has been met. We request data and comment on whether both prongs of the 70/70 test have been met. That is, cable operators should submit the following information on a zip code basis: (a) total number of homes the cable operator currently passes; (b) total number of homes the cable currently passes with 36 or more activated channels; (c) total number of subscribers, including all subscribers in MDUs; and (d) total number of subscribers with 36 or more activated channels. To the extent that cable operators filed 2007 data for the purposes of complying with our 2006 Report, they need not submit this same data again. We also seek comment on whether telephone companies that provide video service and overbuilders should be included in the 70/70 calculation.

23. Under sections 614 and 615 of the Communications Act, cable operators must set aside channel capacity for carriage of local broadcast television stations. We request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions. We also seek information on the percentage of their required set-aside channels that cable operators currently are using to carry local broadcast signals. To what extent do cable operators pay cash for broadcast station carriage rights, carry nonbroadcast programming networks, provide advertising time, or otherwise compensate broadcasters? We ask commenters to address the retransmission consent process, including the effect of retransmission consent compensation on cable rates, the ability of small cable operators to secure retransmission consent on fair and reasonable terms, and the impact on MVPDs and consumers of agreements that require the carriage of nonbroadcast networks in exchange for the right to carry local broadcast stations. We seek comment on these and any other issues relating to must carry and retransmission consent that affect competition in the market for the delivery of video programming.

24. Section 612 of the Communications Act established the leased access rules, which require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator and provide standards for rates, terms and conditions for the use of leased access. We seek comment regarding leased access channels, including the number of channels currently being used by cable operators for these purposes and the types of programming offered on such channels. Are these channels accomplishing their intended purpose of providing competition to the programming channels under the control of the cable operator?

25. We also request comment on the ''tier buy-through'' option mandated by Section 623(b)(8) of the Communications Act, including the percentage of subscribers taking advantage of this option; the problems, if any, it creates; the manner in which cable operators make this option known to the public; and the extent to which

the option is applicable (*i.e.*, the extent to which programming is offered or purchased on a per-program or per-channel basis).

Direct-to-Home Satellite Services

26. We seek information and data that explain the factors contributing to DBS's growth in the video programming market, which may help us assess whether those characteristics will continue to position DBS as cable's principal competitor. Is there evidence of meaningful price competition between DBS and cable? Do initial DBS equipment costs or other factors prevent cable subscribers from switching despite escalating monthly cable bills? Does the dynamic between the platforms change in markets where DBS offers local broadcast signals?

27. We seek updated information on the geographic characteristics of DBS subscribership and the factors that account for its relative strengths or weaknesses in different markets (*e.g.*, areas not served by a cable or other wireline provider vs. other areas). We continue to monitor technical limitations, such as line-of-sight requirements, which impede the availability of DBS to some potential subscribers, in particular MDU residents and residents in areas with natural obstructions, such as trees. How many, or what percentage of, households cannot receive DBS service because they are not within the line-of-site of the satellite signal?

28. We seek updated information on the deployment of DBS satellites as well as information regarding pending additions to DBS satellite fleets, which will result in increased channel capacity or the provision of advanced services. We request information on DBS operators' current channel capacity and how they allocate it. What technical methods are DBS providers using to increase capacity?

29. We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages in markets where they are available? What is the cost to consumers of local-into-local broadcast service? What percentage of DBS subscribers also subscribe to cable in order to receive local broadcast signals? Both DIRECTV and EchoStar have launched local broadcast stations in HD in a number of markets. How many markets receive local high definition programming? We seek information on the type of equipment necessary for DBS subscribers to receive local HD broadcasts and the cost of the service and equipment.

30. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted, which added some new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant or out-of-market broadcast signals, including the option to carry broadcast stations deemed ''significantly viewed'' by the Commission. We request comment on the impact, if any, these provisions have had on the MVPD marketplace. With respect to the new authorization to market broadcast station signals deemed ''significantly viewed,'' to what extent are such signals being made available to subscribers? If such signals are not being marketed, is the situation due to technical or operational considerations, problems with obtaining retransmission consents, or other reasons?

31. We request data on prices for DBS programming packages and equipment, and the subscribership of different packages of programming. Do DBS operators offer any programming on an a la carte basis and, if so, what are the prices and subscription requirements associated with such offerings? What additional charges, if any, are required to obtain foreign language or foreign originated programming? We also request information about programming packages available to C-Band subscribers, including the types of packages offered, their prices, and the amount of programming that is offered on an a la carte basis and that is free and unscrambled.

Local Exchange Carriers

32. We previously reported that LEC entry into the MVPD industry has been limited, but that developments demonstrated renewed LEC interest in providing video programming services. We seek information generally regarding LECs that provide video programming services. Are there any regulatory or statutory impediments to LEC entry into the video service market? Do LECs target specific areas or markets for deployment and what are the determinants of these decisions? How do LEC video services compare to those available from incumbent cable or satellite operators? Is there evidence of price competition between LECs, cable, and satellite operators?

33. The major incumbent local exchange carriers (ILECs) have marketing agreements with DBS providers under which they sell the DBS operator's video services along with their telephony and DSL-based high speed Internet access service. What effect have these agreements had on LEC entry into the video industry? We also request comment on whether smaller ILECs are constructing their own all-fiber or mostly fiber networks to deliver video and advanced services to their existing voice and data customers. Are there any unique barriers to entry into smaller and rural video markets?

Broadband Service Providers

34. We request information regarding the provision of video, voice, and data services by broadband service providers (BSPs), including municipal authorities, independent entities and competitive local exchange carriers (CLECs), as well as any entity that provides broadband services. Are video programming services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percentage of, BSP subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? We seek comment on the effect that BSPs have on video competition, and the characteristics that facilitate BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, demographics, and business models). Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful?

Open Video System Operators

35. To what extent are new wireline entrants operating under the open video system (OVS) classification, and what factors (*e.g.*, state and local franchising requirements) cause new entrants to choose the OVS classification? How many subscribers receive video services from OVS operators and how many subscribers purchase the non-video services offered? We seek information on why new entrants have chosen the OVS classification. Do OVS operators offer video and non-video services in combination with one another and, if so, how are rates affected by the packaging of multiple services? What effect do OVS operators have on video competition?

Electric and Gas Utilities

36. We seek information regarding utility companies that provide video services or plan to deploy them. To what extent are video programming services being bundled with telephone, high-speed Internet access, or other services? How does the ability to offer

bundled services affect the relative competitive position of these utilities? Are utilities' service prices similar to cable operators' pricing of such services? If not, how do they differ?

Broadcast Television Service

37. We seek data and comment on the role of broadcast television in the market for the delivery of video programming. We seek data on broadcast network and station audience shares relative to those of nonbroadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? What forms of compensation are broadcasters receiving for retransmission consent? In terms of additional sources of revenue, to what extent are cable and DBS operators paying cash compensation for retransmission of broadcast stations? If the compensation is not cash based, how is it accounted for?

38. We seek comment on a number of issues concerning the transition to digital television (DTV) service. We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming. We solicit specific information regarding the number of households that will need digital to analog converter boxes as of February 17, 2009, because they rely on over-the-air broadcast television reception and do not have televisions with digital tuners. We also seek information on the number of MVPD households, by type of MVPD service, that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD.

39. We request information regarding the carriage of DTV programming by MVPDs and plans to increase the amount of DTV programming carried. How many MVPD subscribers are served by systems that carry DTV programming, and how many households are subscribing to such services when offered as separate packages? We also request comment on carriage agreements between MVPDs and broadcasters. We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms.

40. We seek information on how MVPDs package and price broadcast and nonbroadcast DTV programming. What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

41. We request information regarding the amount and type of DTV programming (*i.e.*, network, local, syndicated) currently offered by broadcasters and information on broadcasters' plans to increase the amount of DTV programming. To what extent are broadcasters using their DTV spectrum for SDTV, HDTV, and multicasting? To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through and broadcast or do not broadcast for other reasons? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum? Are there differences in the ways that commercial and noncommercial broadcasters are using their DTV spectrum?

42. Have the Commission's programs to educate consumers about the transition to digital television resulted in greater consumer familiarity with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. We seek information on the consumer education efforts of government, retailers, broadcasters, video programmers and producers, and others. How successful are these consumer educations efforts?

43. We seek information on the types of services and content that broadcasters are transmitting using multicasting. In addition, we seek information on whether multicasting is limited to large markets, or if stations in small- and medium-sized markets are multicasting. How much multicast programming is locally produced or locally focused? To what extent is the provision of multicast service dependent upon its carriage by cable and other MVPD operators? In how many markets are cable operators and other MVPDs carrying broadcasters' multicast programming, and which markets are they?

44. DTV also allows broadcasters to use part of their digital bandwidth for subscription multichannel video programming services and datacasting. We seek information on the types of services and content broadcasters are transmitting using multicasting. To what extent is the provision of multicast services dependent on carriage by cable and other MVPD operators?

45. We seek updated information on the adoption of the equipment needed to receive digital programming, either over the air or from an MVPD, such as the total number of digital television (DTV) displays, including HD-ready and Enhanced Definition (ED)-ready monitors, that have been shipped to retailers and how many have been sold to consumers. We request information on how many cable set-top boxes and how many DBS receivers contain over-the-air DTV reception capabilities?

Wireless Cable Systems

46. Wireless cable operators offer limited competition to incumbent cable operators. Many licensees of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) used by wireless cable operators to provide video service have chosen to focus on the delivery of non-video broadband services, such as high-speed Internet service. Have factors such as concerns regarding access to programming, bandwidth considerations, local regulatory considerations, and bundled service offerings, led wireless cable operators to move away from video service?

Private Cable Operators

47. We request information on the types of services offered by private cable operators (PCOs), also known as satellite master antenna television (SMATV) operators. We request information on the number of PCOs in the United States, the geographic areas they serve, the identification and size of PCO companies, and the type of facilities they serve (*e.g.*, hotels, apartment buildings, mobile home parks). We seek comment on whether PCOs are using CARS (*i.e.*, cable television relay service) licenses to provide additional competition to incumbent cable operators.

Commercial Mobile Radio Service Providers and Other Wireless Providers

48. We request updated information on the availability and deployment of mobile video services, including information on programming agreements between video programming networks and other content providers and cell phone companies. Specifically, how many mobile telephone users have access to, and subscribe to, such services? What equipment is needed to receive video over cellular systems, and what is the cost of equipment and service? In which markets is service available? Do current trends in mobile video suggest that we should consider mobile telephone providers that offer video programming to be MVPDs?

49. We seek information on video distribution from other wireless devices that are not CMRS providers and on the viewing equipment, including iPods and personal digital assistants (PDAs), used to receive such programming. We seek information on the manner in which video content is delivered to these devices (*e.g.*, broadcast vs. Internet

downloading). We seek information on how programmers are re-purposing traditional broadcast and nonbroadcast programming for viewing on these devices, and whether programmers are creating content specifically for these new devices.

50. We also request comment on alternative wireless distribution methods and technologies and the extent to which providers have adopted or are considering adopting them. We seek comment on the extent to which new technologies, such as WiMAX, are used to provide services that compete with those offered by traditional video providers, as well as information on the deployment of municipal Wi-Fi networks.

Web-Based Internet Video

51. We request information on the types of video services offered over the Internet in both real time and downloadable formats, and request comment on the quality of web-based video relative to traditional video program distribution. We also ask commenters to provide projections of whether web-based video will become a viable competitor in the marketplace for the delivery of video programming and, if so, when such competition is likely to emerge. Further, we seek information on the extent to which Internet video distribution also has become a means by which some new programming networks are developing audience interest in their programming absent agreements with one of the major MVPDs for distribution of their programming over cable or DBS.

Advanced Services

52. We seek information on the advanced services offered by all MVPDs, *e.g.*, VOD, digital video recorders (DVRs), high-speed Internet access, telephony, and HDTV. We request subscribership statistics; cost data; and information on the type of equipment that is required for each type of service offered. We request information on how MVPDs bundle these services and how this affects competition.

53. For example, we seek information on the programming that is available through video-on-demand. Is there programming that is produced especially for VOD? How much VOD content is local? What amount of VOD content is exclusive to any one video distributor?

54. We seek information on DVR services provided by MVPDs. What percentage of subscribers has access to operator-supplied DVRs, and how many subscribe to the service? How many use a DVR not supplied by an MVPD? We seek information on the characteristics of the DVRs offered (*e.g.*, single or dual tuner, storage capacity). Do DBS providers still use DVRs to approximate VOD service? What percentage of the DVR set-top boxes are leased as opposed to purchased? Do MVPDs plan to offer a network-based or centralized DVR-like service?

55. We seek information about high-speed Internet access service offered by MVPDs. What percentage of MVPD Internet access service subscribers also are video subscribers? How is the service priced, and do video subscribers receive discounts? What is the status of DBS high-speed Internet access (*e.g.*, telephone return path, two-way satellite delivered)? Are MVPDs giving subscribers a choice of Internet service providers? Has any MVPD blocked access to certain kinds of Internet content or applications?

56. Finally, we seek information on the latest developments regarding Voice over Internet Protocol (VoIP) telephony. Is it marketed as part of a bundle of services? Are discounts offered to video subscribers? To what extent are MVPDs phasing out switched circuit telephony?

Technical Issues

57. Technological developments have important consequences for the state of video competition. We seek comment and data on a range of developments related to consumer equipment, navigation devices, the Open Cable Application Platform (OCAP), PacketCable, CableCARDs, advanced compression techniques, technical standards, and home networking.

58. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households currently have analog television sets that are connected to an external set-top box that allows for the provision of various MVPD services? How many of these set-top boxes only provide analog services and how many provide different types of digital service, (*i.e.*, decode and display HD signals)? How many of these MVPD set-top boxes also contain cable modems, IP telephony interfaces, DVR capabilities, or home networking capabilities, and how are they priced? How many set-top boxes are capable of providing video programming on an a la carte basis and is any MVPD offering this service?

59. We also seek information on the retail availability of navigation devices to consumers. How many such devices have been sold? What are the obstacles to equipment manufacturers and others for obtaining approval to attach devices to MVPD systems? How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market? We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs. We also request information on how many products are currently available with plug-and-play functionality, or are soon to be available.

60. We seek updated information on developments regarding CableLabs' Open Cable Application Platform (OCAP) middleware solution. Which manufacturers are incorporating OCAP into their products? How many OCAP-compliant products have been deployed, and how many are in use today? What types of applications exist for OCAP? Do smaller cable systems have plans to deploy these devices and, if so, how will they do it? We seek information on the results of OCAP device trials by MSOs in select markets, and whether they are expected to lead to commercial deployments and, if so, when. We request information on industry developments to facilitate bidirectional services and interactive television (ITV) applications and services. We also request updated information on the state of the agreement between the Consumer Electronics Association and the National Cable & Telecommunications Association to incorporate support for OCAP in interactive Digital Cable Ready (iDCR) devices, and whether any technical issues remain.

61. We solicit updated information on PacketCable, the specification standard for the delivery of advanced real-time multimedia services over two-way cable plant. We also seek updated information on CableCARDs, including the number operators have placed in service, the manner in which subscribers may obtain a CableCARD, whether operators require professional installation of the card, and any monthly subscription charges or one-time fees associated with installing or authorizing the CableCARD. Have MVPDs or consumers encountered problems with CableCARDs, and how have they been resolved? We seek information on the status of operators' efforts to develop multistream and two-way CableCARDs, and the impact this development will likely have on the competitive marketplace for digital cable-ready receivers, including DVRs.

62. We request updated information on the development and deployment of any downloadable conditional access systems. We seek comment on what content protection technologies are now available, how they work, and what legal or marketplace impediments have affected the roll-out of such tools. We seek comment on what security measures are in use and the effect of the choice of such security measures on competition. We also invite comment on how the Commission can encourage the development of digital rights management technology that will promote consumer uses of, and access to, high value digital content.

63. Broadcasters continue to improve their service and offerings through enhancements to digital Vestigial Sideband Broadcasting (VSB), called Enhanced VSB (E–VSB) and Advanced VSB (A–VSB). E–VSB was approved by the American Television Standards Committee in July 2004, as an amendment to the standard that allows broadcasters to choose between bit rates and added robustness without impeding HDTV. Possible uses of the technology include applications such as robust data broadcasting to desktops, transmissions of file-based information to handheld receivers, and ''fallback'' audio. However, E–VSB adoption has been slow due to a lack of demand and a lack of E–VSB enabled receivers. A–VSB is another amendment being proposed to the ATSC for mobile video applications. ATSC has accepted the proposal of A–VSB, but it has not yet reached the ''candidate standard'' stage, which involves more exacting technical review. We request information on these and other technological advances in digital broadcasting.

64. We seek information on the effect that technical rules and standards have on the market for video programming services. Are there specific actions with respect to the establishment of technical rules and standards that the Commission may take to foster greater competition among video service providers? Do current technical rules and standards related to the provision of video services, such as the ''plug-and-play'' standards, provide a level playing field among competitors in the video delivery marketplace?

Foreign Markets

65. We seek information or case studies that address the status of competition in foreign markets for the delivery of video programming because developments in other countries can lend insight into the nature of competition in the United States. Specifically, we seek information regarding the differences between the U.S. market and foreign markets, including differences in pricing; packaging (*e.g.*, a la carte offerings); deployment of VoIP; the DTV transition; and competition among MVPDs or over-the-air service. We seek input from distributors operating both in the United States and abroad. How do different regulatory approaches affect their business models? Commenters also should identify any country in particular that the Commission should examine.

Procedural Matters

66. *Authority.* This *NOI* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

67. *Ex Parte Rules.* There are no *ex parte* or *disclosure* requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

68. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *NOI,* MB Docket No. 07–269, on or before February 27, 2009, and reply comments on or before March 27, 2009. Comments may be filed using: (a) the Commission's Electronic Comment Filing System (ECFS), (b) the Federal Government's eRulemaking Portal, or (c) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.Commission.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- In addition, parties must serve the following with either an electronic copy via e-mail or a paper copy of each pleading: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at *http://www.bcpiweb.com*; (2) Marcia Glauberman, Media Bureau, 445 12th Street, SW., Room 2-C264, *Marcia.Glauberman@fcc.gov*; and (3) Dana Scherer, Media Bureau, 445 12th Street, SW., Room 2-C222, *Dana.Scherer@fcc.gov.*

People with Disabilities: Contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at *Commission504@Commission.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–2916 Filed 2–10–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, February 12, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2008–21: CME Group, Inc., by Lawrence M. Noble, Esq. and Patricia M. Zweibel, Esq.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

FOR FURTHER INFORMATION CONTACT: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–2841 Filed 2–10–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 010977–061.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services; Seaboard Marine Ltd., and Tropical Shipping and Construction Co. Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would replace Crowley Liner Services, Inc. with Crowley Latin America Services, LLC. The parties request expedited review.

Agreement No.: 011075–072.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would replace Crowley Liner Services, Inc. with Crowley Latin America Services, LLC. The parties request expedited review.

Agreement No.: 011794–009.

Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment would reduce the vessel contributions and fleet capacities of the parties.

Agreement No.: 012057–001.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Asia to USEC and PNW-Suez/PNW & Panama Loops.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would clarify the minimum duration of the Agreement and would revise Appendix A to reflect that additional affiliates will be added to the list.

By order of the Federal Maritime Commission.

Dated: February 6, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–2923 Filed 2–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

KCL Logistics Inc., 220 N. Electric Avenue, Alhambra, CA 91801, *Officers:* King O. Li, President, (Qualifying Individual), Kevin Chor K. Leung, Treasurer.

Jets Cargo LLC, 2331 S. Otis Street, Santa Ana, CA 92705, *Officers:* Van T. Phung, Secretary, (Qualifying Individual), Christopher T. Le, CEO.

General Logistics, Inc., 1400 NW 159th Street, Miami Gardens, FL 33169, *Officers:* Yelena Farber, Secretary, (Qualifying Individual), Lezek Przybylski, President.

Competition Transport Inc., 1326 Spruce Avenue, Orlando, FL 32824, *Officers:* Ignacio Parra, Vice President, (Qualifying Individual), William Tang, President.

Worldwide Ocean & Air Shipping Lines Inc., dba End2end Global Lines, 31–07 Stars Ave., #D, Long Island City, NY 11101, *Officer:* Shyam Kumar, President, (Qualifying Individual).

Weiss Rohlig USA LLC, 351 W. Touhy Avenue, Ste. 100, Des Plaines, IL 60018, *Officer:* Daniela Wurm, Compliance Manager, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

AES Logistics, Inc. dba AES Worldwide dba AES Logistics, 140 SW 153rd Street, Burien, WA 98166, *Officer:* Robert A. Schwieger, Vice President, (Qualifying Individual).

CargoLogis USA LLC, 182–16 149th Road, Springfield Gardens, NY 11413, *Officers:* Melisa R. Sobalvarro, Vice President, (Qualifying Individual), Alex Epshteyn, President.

Dnipro LLC, 645 West 1st Ave., Roselle, NJ 07203, *Officers:* Leticia Petrov, Exp. Cus. Serv., (Qualifying Individual), Igor Pluta, President.

Zai Cargo, Inc. dba Zai Ocean Services dba Zai Container Line, 6324 NW 97th Avenue, Doral, FL 33178, *Officers:* Horacio Zapata, President, (Qualifying Individual).

ShinYoung Express Inc., 1490 Beachey Place, Carson, CA 90746,

Officers: Jennifer H. Yun, CEO, (Qualifying Individual), Sung Hyun Yun, CFO.

Aix., Inc., 4852 Jimmy Carter Blvd., Norcross, GA 30093, *Officer:* Ayo M. Balogun, Dir. Of Operations, (Qualifying Individual).

K & K Express, LLC, dba K2 Logistics, 2782 Eagandale Blvd., Eagan, MN 55121, *Officer:* Patrick S. Young, Int'l. Opera. Manager, (Qualifying Individual).

ADP Logistics Corp., 517 W. Wrightwood Avenue, Elmhurst, IL 60128, *Officers:* Brian Lara, Associate V. President, (Qualifying Individual), Yinggang Chen, President.

International Logistic Services, Inc., 155–11 146th Avenue, Jamaica, NY 11434, *Officers:* Steven N. Leff, Vice President, (Qualifying Individual), Jean-Paul Noens, President.

ProCargo Solutions, Inc., 9414 East San Salvador Drive, Scottsdale, AZ 85258, *Officers:* Yeon-Hee Hwang, President, (Qualifying Individual), You-Sun Hwang, Vice President.

Ocean Line Logistics Inc., 582 W. Huntington Drive, Arcadia, CA 91007, *Officers:* Wei Jiang, Vice President, (Qualifying Individual), Peixin Li, CEO.

Arrowpoint Logistics, Inc., 3803 S. 250 W., Logan, UT 84321, *Officer:* Daniel M. Bryan, President, (Qualifying Individual).

Air Cargo Sales, Inc., 429 Moon Clinton Road, Coraopolis, PA 15108, *Officers:* Debbrah A. Yarosz, Import Coordinator, (Qualifying Individual), George C. Shearer, President.

Oceania, LLC, 52 Butler Street, Elizabeth, NJ 07206, *Officers:* Susan Howard, Vice President, (Qualifying Individual), James M. Allocca, President.

MSFW, Inc., 500 E. Carson Plaza Drive, Carson, CA 90746, *Officers:* Ki S. Yoon, Director/Secretary, (Qualifying Individual), Robert Sang Bong Choung, President.

AGL Logistics Inc., 1255 Corporate Center Drive, Monterey Park, CA 91754, *Officer:* Lai Wa Chun, President, (Qualifying Individual).

USCOM Logistics, Inc., 335 W. Artesia Blvd., Compton, CA 90220, *Officers:* Young C. Joh, Vice President, (Qualifying Individual), Chung J. Park, President.

Able Freight Services, Inc., 5340 West 104th Street, Los Angeles, CA 90045, *Officers:* Myungsil Y. Francis, Vice President, (Qualifying Individual), Scott I. Murray, President.

L & Z Multiservices, Inc., 2621 W. Flagler Street, Miami, FL 33135, *Officers:* Luis Calcedo, President, (Qualifying Individual), Zulema Calcedo, Vice President.

UKO Logis Inc., 879 W. 100th Street, Gardena, CA 90248, *Officer:* Jae Kim, CFO, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Scanwell Logistics (SFO) Inc., 400 Oyster Pt. Blvd., Ste. 135, So. San Francisco, CA 94080, *Officers:* Gino Ming Tsung Lin, President, (Qualifying Individual), Adam Hassan, Chairman of Board.

Min America Inc., 11357 Nuckols Road, Glen Allen, VA 23059, *Officer:* Mohammad K. Al-Salom, Partner, (Qualifying Individual).

CMI USA Inc., 184 Hebberd Avenue, Paramus, NJ 07652, *Officers:* Elie M. Ibrahim, President, (Qualifying Individual), Rita Dabragh, Vice President.

Dated: February 6, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–2925 Filed 2–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
012367N	Maritime Express, Inc., 12613 Executive Drive, #700, Stafford, TX 77477	November 26, 2008.
021284N	USTC America, Inc., 1250 E. 223rd Street, Suite 107, Carson, CA 90745	December 7, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–2924 Filed 2–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 016207N.
Name: Admiral Overseas Shipping Company, Inc.
Address: 323 S. Swing Rd., Greensboro, NC 27409.
Date Revoked: January 24, 2009.
Reason: Failed to maintain a valid bond.

License Number: 000415F.
Name: Aircargo Brokerage Co.
Address: 5301 NW 74th Ave., Miami, FL 33166.
Date Revoked: December 24, 2008.
Reason: Failed to maintain a valid bond.

License Number: 018063F.
Name: Ark Technology, Inc. dba Ark International.
Address: 14545 Valley View Ave., Ste. G, Santa Fe Spring, CA 90670.
Date Revoked: January 10, 2009.
Reason: Failed to maintain a valid bond.

License Number: 015839N.
Name: Asian-Pacific Dragon Shipping, Inc.
Address: 9420 Yelstar Ave., Ste. 108, El Monte, CA 91731.
Date Revoked: January 4, 2009.
Reason: Failed to maintain a valid bond.

License Number: 020465NF.
Name: Express Cargo USA LLC.
Address: 1675 York Ave., Ste. 31B, New York, NY 10128.
Date Revoked: January 10, 2009.
Reason: Failed to maintain valid bonds.

License Number: 003072N.
Name: General International Freight Forwarders, Inc.
Address: 200 W. Thomas Street, Ste. 430, Seattle, WA 98119.
Date Revoked: December 26, 2008.
Reason: Failed to maintain a valid bond.

License Number: 018680N.
Name: Global Express International, LLC.
Address: 13439 Pumice Street, Norwalk, CA 90650.
Date Revoked: January 23, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017381F.
Name: HPK Logistics (USA) Inc.
Address: 727 Brea Canyon Road, Ste. 14, Walnut, CA 91789.
Date Revoked: January 29, 2009.
Reason: Failed to maintain a valid bond.

License Number: 021032NF.
Name: IVI International Corp. dba IVI International Freight Forwarders.
Address: 10250 N.E. 89th Ave., Bay #10, Medley, FL 33178.
Date Revoked: January 23, 2009.
Reason: Surrendered license voluntarily.

License Number: 018147F.
Name: Jag Int'l of So. Fla., Inc.
Address: 72 East McNab Road, Ste. 54, Pompano Beach, FL 33060.
Date Revoked: January 19, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019687N.
Name: OCS Logistics Inc.
Address: 17990 E. Ajax Circle, City of Industry, CA 91748.
Date Revoked: January 15, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019533NF.
Name: Opus-One Cargo Corp.
Address: 7180 NW 84th Ave., Miami, FL 33166.
Date Revoked: January 30, 2009.
Reason: Failed to maintain valid bonds.

License Number: 018862F.
Name: Rima R. Saleh dba Overseas Shipping.
Address: 3709 So. George Mason Drive, Ste. 1314E, Falls Church, VA 22041.
Date Revoked: December 24, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020474N.
Name: Sino-USA Logistics, Inc.
Address: 11570 Wright Road, Lynwood, CA 90262.
Date Revoked: January 15, 2009.
Reason: Failed to maintain a valid bond.

License Number: 004440F.
Name: Sunwood International, Inc.
Address: 11222 S. LaCienega Blvd., Ste. 180, Inglewood, CA 90304.
Date Revoked: December 20, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020854NF.
Name: Ten Dragons Logistics Corp. dba Ten Dragons dba Ten Dragons Logistics.
Address: 24051 Lapwing Lane, Laguna Niguel, CA 92677.
Date Revoked: January 9, 2009.
Reason: Failed to maintain valid bonds.

License Number: 004164NF.
Name: Tober Group Inc.
Address: 38–50 Pulaski Street, Bayonne, NJ 07002.
Date Revoked: January 15, 2009.
Reason: Failed to maintain valid bonds.

License Number: 019074N.
Name: Worldgreen Shipping Line, Inc. dba Worldgreen Line.
Address: 1371 S. Santa Fe Ave., Ste. 200, Compton, CA 90221.
Date Revoked: August 6, 2005.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E9–2922 Filed 2–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), February 17, 2009.

PLACE: Serco Inc., 1818 Library Street, Suite 1000, Reston, Virginia 20190.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 15, 2008 Board member meeting.
2. Transition from SI International to Serco Inc.
3. Systems Modernization Plan Update.
4. Department of Labor Audit Briefing.
   a. Audit of the System Enhancements and Development Lifecycle and Software Change Controls over the Thrift Savings Plan System.
   b. Audit of the Service Continuity Controls over the Thrift Savings Plan System.
5. Thrift Savings Plan Activity Report by the Executive Director.
   a. Monthly Participation Activity Report.
   b. Legislative Report.
   c. Employee Thrift Advisory Committee Report.
   d. Office of Participant Services Report.
6. Real Estate Investment Trust Report.
7. Participant Survey Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 9, 2009.

Thomas K. Emswiler,
Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–3058 Filed 2–9–09; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.
Time and Date: February 25, 2009 9 a.m.–3 p.m.; February 26, 2009 10 a.m.–4 p.m.
Place: Hubert H. Humphrey Building, 200 Independence Ave., SW., Room 505A, Washington, DC 20201.
Status: Open.
Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Centers for Medicare and Medicaid Services, the American Health Information Community (AHIC–2) Successor, and an update from the Office of the National Coordinator (ONC) on the National Health Information Network (NHIN) Conference. In the afternoon there will be a speaker on the de-identification of health data.

On the morning of the second day the Committee will discuss subcommittee work. There will also be a presentation on international terminology and an update on Health Statistics for the 21st Century. In addition, there will be an update on the work of the National Center for Health Statistics' Board of Scientific Counselors. In the afternoon, the Committee will hear an overview of emerging and innovative sources of health care data.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 3, 2009.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E9–2876 Filed 2–10–09; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Populations Subcommittee Meeting.

Time and Date: February 27, 2009 8:30 a.m.—1 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

Status: Open.

Purpose: The Populations Subcommittee will hear testimony from invited experts on Federal data capacity to support health policy in the area of modeling health insurance data, to include coverage, access, utilization, quality, and cost of care. The meeting will conclude with a roundtable discussion between the Populations Subcommittee and speakers.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Debbie Jackson, lead staff for Populations Subcommittee, NCVHS, Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Room 2339, Hyattsville, Maryland, 20782, telephone (301) 458–4614 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 4, 2009.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E9–2877 Filed 2–10–09; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Report on Carcinogens (RoC); Request for Public Comments on the RoC Expert Panel's Recommendation on Listing Status for Cobalt-Tungsten Carbide Powders and Hard Metals in the 12th RoC and the Scientific Justification for the Recommendation

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for comments.

SUMMARY: The NTP invites public comment on the recommendation from an expert panel on the listing status for cobalt-tungsten carbide powders and hard metals in the 12th RoC and the scientific justification for the recommendation. The recommendation and scientific justification for cobalt-tungsten carbide powders and hard metals are available electronically in Part B of the Expert Panel Report (*http://ntp.niehs.nih.gov/go/29682,* see Expert Panel Report Part B) or in printed text from the RoC Center (see **FOR FURTHER INFORMATION CONTACT** below). The RoC Center convened a seven-member expert panel of scientists, plus one technical scientific expert, from the public and private sectors on December 9–10, 2008. The panel was asked (1) to apply the RoC listing criteria to the relevant scientific evidence and make a recommendation regarding listing status (*i.e., known to be a human carcinogen, reasonably anticipated to be a human carcinogen, or not to list*) for cobalt-tungsten carbide powders and hard metals in the 12th RoC and (2) to provide the scientific justification for the recommendation.

DATES: The Expert Panel Report (Part B) for cobalt-tungsten carbide powders and hard metals will be available for public comment by February 4, 2009. Written comments should be submitted by March 30, 2009.

ADDRESSES: Comments should be sent to Dr. Ruth Lunn, Director, RoC Center [NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709, FAX: 919–541–0144, or *lunn@niehs.nih.gov.* Courier address: Report on Carcinogens Center, NIEHS, 530 Davis Drive, Room 2006, Durham, NC 27713].

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, RoC Center, 919–316–4637 or *lunn@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

Cobalt-tungsten carbide hard metals are composites of carbides (including tungsten carbide alone or in combination with small amounts of other carbides) with a metallic cobalt binder, pressed into a compact, solid form at high temperatures by a process known as ''sintering.'' Cobalt-tungsten carbide hard metals are used primarily in cutting tools. Cobalt-tungsten carbide hard metals are manufactured and used in the United States. Occupational exposure to cobalt-tungsten carbide hard-metal particles can occur during hard-metal production, recycling of hard-metal products, and grinding and sharpening of hard-metal tools.

As part of the RoC review process (available at *http://ntp.niehs.nih.gov/go/29353*), the NTP announced the availability of the draft background document for cobalt-tungsten carbide powders and hard metals (73FR60288), invited public comments on the draft background document, and announced the cobalt-tungsten carbide powders and hard metals expert panel meeting. The RoC Center convened a seven-member expert panel of scientists from the public and private sectors to evaluate cobalt-tungsten carbide powders and hard metals. An additional, non-voting, expert scientist was also in attendance to respond to technical concerns from the panel. The expert panel met on December 9–10, 2008, in a public forum at the Sheraton Chapel Hill Hotel, Chapel Hill, North Carolina. The panel was charged to peer review the draft background document for cobalt-tungsten carbide powders and hard metals and then to make a recommendation on its listing status in the 12th RoC and to provide a scientific justification for that recommendation. Details about the meeting, including public comments received and the expert panel reports, are available on the RoC Web site (*http://ntp.niehs.nih.gov/go/29682*). The expert panel report for cobalt-tungsten carbide powders and hard metals contains two parts: Part A has the peer-review comments on the draft background document and Part B has the recommendation on listing status and its scientific justification. The expert panel recommended that cobalt-tungsten carbide powders and hard metals be listed in the 12th RoC as

reasonably anticipated to be a human carcinogen.

Request for Comments

The RoC Center invites written public comments on the expert panel's recommendation on listing status for cobalt-tungsten carbide powders and hard metals and the scientific justification for the recommendation. All comments received will be posted on the RoC Web site. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Lunn (see **ADDRESSES** above). The deadline for submission of written comments is March 30, 2009.

Next Steps

The RoC Center is in the process of finalizing the background document for cobalt-tungsten carbide powders and hard metals based upon the expert panel's peer review comments and the public comments received (73FR60288). Persons can register free-of-charge with the NTP listserve (*http://ntp.niehs.nih.gov/go/231*) to receive notification when the final background document is posted on the RoC Web site (*http://ntp.niehs.nih.gov/go/10091*). As part of the RoC review process, two government groups will also conduct reviews of cobalt-tungsten carbide powders and hard metals; these meetings are not open to the public. Upon completion of these reviews, the NTP will (1) draft a substance profile for cobalt-tungsten carbide powders and hard metals that contains its listing recommendation for the 12th RoC and the scientific information supporting that recommendation, (2) solicit public comment on the draft substance profile, and (3) convene a meeting of the NTP Board of Scientific Counselors to peer review the draft substance profile.

Background Information on the RoC

The RoC is a Congressionally mandated document that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health by virtue of their carcinogenicity. The RoC follows a formal, multi-step process for review and evaluation of selected chemicals. Substances are listed in the report as either *known or reasonably anticipated human carcinogens.* The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. Information about the RoC and the review process is available on its Web site (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **FOR FURTHER INFORMATION CONTACT** above).

Dated: January 29, 2009.

Linda S. Birnbaum,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E9–2823 Filed 2–10–09; 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: Methodology for Determining Whether an Increase in a State's Child Poverty Rate is the Result of the TANF program—NPRM.

OMB No.: 0970–0186.

Description: In accordance with Section 413(i) of the Social Security Act and 45 CFR part 284, the Department of Health and Human Services (HHS) intends to reinstate the following information collection requirements. For instances when Census Bureau data show that a States child poverty rate increased by 5 percent or more from one year to the next, a State may submit independent estimates of its child poverty rate. If HHS determines that the States independent estimates are not more reliable than the Census Bureau estimates, HHS will require the State to submit an assessment of the impact of the TANF program(s) in the State on the child poverty rate. If HHS determines from the assessment and other information that the child poverty rate in the State increased as a result of the TANF program(s) in the State, HHS will then require the State to submit a corrective action plan.

Respondents: The respondents are the 50 States, the District of Columbia and Puerto Rico; when reliable Census Bureau data become available for the Territories, additional respondents might include Guam and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Optional Submission of Data on Child Poverty from an Independent Source	52	1	8	416
Assessment of the Impact of TANF on the Increase in Child Poverty	52	1	120	6,240
Corrective Action Plan	52	1	160	8,320

Estimated Total Annual Burden Hours: 14,976.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB 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 6, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–2894 Filed 2–10–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request; Head Start Grants Administration

Title: Head Start Grants Administration (45 CFR part 1301).

OMB No.: 0980–0243.

Description: 45 CFR contains provisions applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance, bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel administration.

Respondents: Head Start and Early Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR Part 1301	2,700	1	2	5,400

Estimated Total Annual Burden Hours: 5,400

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB 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 6, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–2895 Filed 2–10–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of meeting.

DATES: The meeting will be held on Friday, February 27, 2009, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201. To attend either in person or via teleconference, please register by 5 p.m. Eastern Time, February 24, 2009. To register, please e-mail *carol.apelt@acf.hhs.gov* with ''Meeting Registration'' in the subject line, or call (202) 205–4618. Registration must include your name, affiliation, and phone number. If you require a sign language interpreter or other special assistance, please call Carol Apelt at (202) 205–4618 as soon as possible and no later than 5 p.m. Eastern Time, February 13, 2009.

Agenda: As pertaining to all hazards, including man-made and natural disasters, the Commission will hear subcommittee presentations on and discuss recommendations regarding: (1) Acute medical care and countermeasures; (2) disaster case management and recovery; (3) sheltering; (4) mental health; and (5) other matters as may reasonably come before the Commission and plans for future work of the Commission.

Additional Information: Contact Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *roberta.lavin@acf.hhs.gov* or (202) 401–9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters is an independent Presidential Commission that shall independently conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies.

Dated: February 5, 2009.

Curtis L. Coy,

Acting Assistant Secretary for Children and Families.

[FR Doc. E9–2886 Filed 2–10–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0030]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

DATES: Submit written or electronic comments on the collection of information by April 13, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug Regulations—21 CFR Part 312 (OMB Control Number 0910 0014)—Extension

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in FDA's regulations ''Investigational New Drug Application'' in part 312 (21 CFR part 312). Part 312 implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The Investigational New Drug (IND) regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can do the following: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, assure subject safety, assure that a study will be conducted ethically, and increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312:

The first form is Form FDA–1571—''Investigational New Drug Application.'' A person who intends to conduct a clinical investigation submits this form to FDA. It includes the following information: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory

statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

The second form is Form FDA–1572—''Investigator Statement.'' Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1—REPORTING AND RECORDKEEPING REQUIREMENTS IN 21 CFR PART 312

REPORTING REQUIREMENTS	
21 CFR Section	Requirements
312.7(d)	Applications for permission to sell an investigational new drug
312.80	Charging for investigational drugs under an IND
312.10	Applications for waiver of requirements under part 312; as indicated in § 312.10(a), estimates for this requirement are included under §§ 312.23 and 312.31. In addition, separate requests under § 312.10 are estimated in table 2 of this document.
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24); estimates for this requirement are included under § 312.23.
312.23	INDs (content and format)
(a)(1)	Cover sheet FDA–1571
(a)(2)	Table of contents
(a)(3)	Investigational plan for each planned study
(a)(5)	Investigator's brochure
(a)(6)	Protocols—Phases 1, 2, and 3
(a)(7)	Chemistry, manufacturing, and control information
(a)(7)(iv)(*a*), (*b*), and (*c*)	A description of the drug substance, a list of all components, and any placebo used
(a)(7)(iv)(*d*)	Labeling: Copies of labels and labeling to be provided each investigator
(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use
(a)(8)	Pharmacological and toxicology information
(a)(9)	Previous human experience with the investigational drug
(a)(10)	Additional information
(a)(11)	Relevant information
(f)	Identification of exception from informed consent
312.30	Protocol amendments
(a)	New protocol
(b)	Change in protocol
(c)	New investigator
(d)	Content and format
(e)	Frequency
312.31	Information amendments
(b)	Content and format
	Chemistry, toxicology, or technical information
312.32	Safety reports
(c)(1)	Written reports to FDA and to investigators
(c)(2)	Telephone reports to FDA for fatal or life-threatening experience
(c)(3)	Format or frequency
(d)	Followup submissions
312.33	Annual reports
(a)	Individual study information
(b)	Summary information
(b)(1)	Adverse experiences
(b)(2)	Safety report summary
(b)(3)	List of fatalities and causes of death
(b)(4)	List of discontinuing subjects
(b)(5)	Drug action
(b)(6)	Preclinical studies and findings
(b)(7)	Significant changes
(c)	Next year general investigational plan
(d)	Brochure revision
(e)	Phase I protocol modifications
(f)	Foreign marketing developments
312.35	Treatment use of investigational new drugs
(a)	Treatment protocol submitted by IND sponsor
(b)	Treatment IND submitted by licensed practitioner

TABLE 1—REPORTING AND RECORDKEEPING REQUIREMENTS IN 21 CFR PART 312—Continued

REPORTING REQUIREMENTS	
21 CFR Section	Requirements
312.36	Requests for emergency use of an investigational new drug
312.38(b) and (c)	Notification of withdrawal of an IND
312.42(e)	Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated
312.45(a) and (b)	Sponsor request for, or response to, inactive status determination of an IND
312.47(b)	''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings
312.53(c)	Investigator information; investigator report (Form FDA–1572) and narrative; investigator's background information; Phase 1 outline of planned investigation; and Phase 2 outline of study protocol
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use; only ''new observations'' are estimated under this section; investigator brochures are included under § 312.23
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA
312.58(a)	Sponsor's submission of records to FDA on request
312.64	Investigator reports to the sponsor
(a)	Progress reports
(b)	Safety reports
(c)	Final reports
312.66	Investigator reports to Institutional Review Board; estimates for this requirement are included under § 312.53
312.70(a)	Investigator disqualification; opportunity to respond to FDA
312.83	Sponsor submission of treatment protocol; estimates for this requirement are included under §§ 312.34 and 312.35
312.85	Sponsors conducting Phase 4 studies; estimates for this requirement are included under § 312.23 in 0910–0014, and §§ 314.50, 314.70, and 314.81 in 0910–0001
312.110(b)	Request to export an investigational drug
312.120	Submissions related to foreign clinical studies not conducted under an IND
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24
RECORDKEEPING REQUIREMENTS	
21 CFR Section	Requirements
312.52(a)	Transfer of obligations to a contract research organization
312.57	Sponsor recordkeeping
312.59	Sponsor recordkeeping of disposition of unused supply of drugs; estimates for this requirement are included under § 312.57
312.62(a)	Investigator recordkeeping of disposition of drugs
312.62(b)	Investigator recordkeeping of case histories of individuals
312.120(d)	Recordkeeping requirements for submissions related to foreign clinical studies not conducted under an IND; estimates for this requirement are included under § 312.57
312.160(a)(3)	Records maintenance: shipment of drugs for investigational use in laboratory research animals or in vitro tests
312.160(c)	Shipper records of alternative disposition of unused drugs

In tables 2 and 3 of this document, the estimates for ''No. of Respondents,'' ''No. of Responses per Respondent,'' and ''Total Annual Responses'' were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2007 and from other sources familiar with the number of submissions received under part 312. The estimates for ''hours per response'' were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	28	1.58	44	24	1,056
312.10	4	1	4	10	40
312.23(a) through (f)	2,496	1.26	3,156	1,600	5,049,600
312.30(a) through (e)	2,030	8.91	18,079	284	5,134,436
312.31(b)	153	2.97	454	100	45,400
312.32(c) and (d)	985	23.06	22,713	32	726,816
312.33(a) through (f)	2,564	2.34	5,994	360	2,157,840
312.35(a) and (b)	9	1.11	10	300	3,000
312.36	525	1.23	645	16	10,320
312.38(b) and (c)	654	1.34	874	28	24,472
312.42(e)	149	1.10	164	284	46,576
312.44(c) and (d)	159	1.13	179	16	2,864
312.45(a) and (b)	254	1.43	362	12	4,344
312.47(b)	281	1.8	529	160	84,640
312.53(c)	900	26.51	23,855	80	1,908,400
312.54(a) and (b)	1	1	1	48	48
312.55(b)	985	2,306	2,271,300	48	109,022,400
312.56(b), (c), and (d)	18	1	18	80	1,440
312.58(a)	91	4.10	373	8	2,984
312.64	141,393	1	141,393	24	3,393,432
312.70(a)	4	1.5	6	40	240
312.110(b)	23	18.26	420	75	31,500
312.120[2]	115	5	575	32	18,400
312.130(d)	3	1	3	8	24

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.
[2] Section 312.120 includes the burden estimate for both CDER and CBER.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]

21 CFR Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Hours per Record	Total Hours
312.52(a)	683	1	683	2	1,366
312.57	75	485.28	36,396	100	3,639,600
312.62(a)	14,732	1	14,732	40	589,280
312.62(b)	147,320	1	147,320	40	5,892,800

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS AND BIOLOGICS (CDER)[1]—Continued

21 CFR Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Hours per Record	Total Hours
312.160(a)(3)	547	1.4	782	.5	391
312.160(c)	547	1.4	782	.5	391

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS (CBER)[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Responses	Total Hours
312.7(d)	12	1.1	13	24	312
312.23(a) through (f)[2]	168	1.5	256	1,600	409,600
312.30(a) through (e)	372	6.4	2,369	284	672,796
312.31(b)[2]	703	7.7	5,417	100	541,700
312.32(c) and (d)	175	14.6	2,563	32	82,016
312.33(a) through (f)	512	2.3	1,168	360	420,480
312.35(a) and (b)	1	1	1	300	300
312.36	10	4	40	16	640
312.38(b) and (c)	81	1.5	120	28	3,360
312.42(e)	74	1.5	108	284	30,672
312.44(c) and (d)	34	1.1	39	16	624
312.45(a) and (b)	41	1.4	59	12	708
312.47(b)	31	1.2	37	160	5,920
312.53(c)	243	4.95	1,203	80	96,240
312.54(a) and (b)	1	1	1	48	48
312.55(b)	42	1	43	48	2,064
312.56(b), (c), and (d)	10	1.6	16	80	1,280
312.58(a)	7	1	7	8	56
312.64	2,728	3.82	10,411	24	249,864
312.70(a)	5	1	5	40	200
312.110(b)	18	1	18	75	1,350
312.130(d)	1	1	1	8	8

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.
[2] The reporting requirement for § 312.10 is included in the estimates for §§ 312.23 and 312.31.

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS (CBER)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
312.52(a)	52	1.4	73	2	146
312.57	168	3.05	512	100	51,200
312.62(a)	2,560	1	2,560	40	102,400
312.62(b)	2,560	10	25,600	40	1,024,000
312.160(a)(3)	55	1.4	77	0.5	38.5

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS (CBER)[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
312.160(c)	55	1.4	77	0.5	38.5

[1] There are no capital and startup, or operation, maintenance, and purchase costs associated with the collection of information requirements.

TABLE 6—TOTALS FOR ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS FOR CDER AND CBER

Reporting Burden	130,190,510
Recordkeeping	11,301,652
Total	141,492,162

Dated: February 4, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2846 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0031]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Generally Recognized as Safe: Notification Procedure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Notification Procedure for Substances Generally Recognized as Safe.

DATES: Submit written or electronic comments on the collection of information by April 13, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substances Generally Recognized as Safe: Notification Procedure—21 CFR 170.36 and 570.36 (OMB Control Number 0910–0342)—Extension

Section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) establishes a premarket approval requirement for ''food additives;'' section 201(s) of the act (21 U.S.C. 321) provides an exemption from the definition of ''food additive'' and thus from the premarket approval requirement, for uses of substances that are Generally Recognized as Safe (GRAS) by qualified experts. In April 1997, FDA proposed a voluntary procedure whereby manufacturers would notify FDA about a view that a particular use (or uses) of a substance is not subject to the statutory premarket approval requirements based on a determination that such use is GRAS (62 FR 18938, April 17, 1997). Proposed §§ 170.36 and 570.36 provide a standard format for the voluntary submission of a notice. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the subject of the GRAS notice, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
170.36	25	1	25	150	3,750
570.36	5	1	5	150	750
Total					4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
170.36(c)(v)	25	1	25	15	375
570.36(c)(v)	5	1	5	15	75
Total					450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the proposed rule, FDA estimated that the Center for Food Safety and Applied Nutrition (CFSAN) would receive approximately 50 GRAS notices per year and that the Center for Veterinary Medicine (CVM) would receive approximately 10 GRAS notices per year. Although FDA requested comment on this estimate, the comments did not provide useful information regarding this issue. Therefore, FDA evaluated the number of notices received by CFSAN to date. CFSAN received 274 GRAS notices during the 11-year period from 1998 through 2008, for an average of approximately 25 GRAS notices per year. Based on this experience, FDA is revising its estimate of the annual number of GRAS notices submitted to CFSAN to be 25 or less. FDA also is revising its estimate of the annual number of GRAS notices submitted to CVM to be 5 or less.

Dated: February 4, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2861 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0571]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Compliance With the Medical Device User Fee and Modernization Act of 2002, as Amended: Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices (formerly ''Reprocessed Single-Use Device Labeling'')

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 13, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submissions@OMB.eop.gov*. All comments should be identified with the OMB control number 0910–0577. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry and Food and Drug Administration Staff; Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as Amended: Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices (formerly ''Reprocessed Single-Use Device Labeling'') (Federal Food, Drug and Cosmetic Act, Section 502(u)) (OMB Control Number 0910–0577)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Section 301 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250) amended section 502 of the act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. Thus, the name for this information collection activity has been changed to

more accurately describe the information collection content.

Section 2(c) of The Medical Device User Fee Stabilization Act of 2005 (Public Law 109–43) amends section 502(u) of the act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol, in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse, may identify itself using a detachable label that is intended to be affixed to the patient record.

The requirements of section 502(u) of the act impose a minimal burden on industry. This section of the act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 10 establishments that distribute approximately 1,000 reprocessed SUDs. Each response is anticipated to take 0.1 hours resulting in a total burden to industry of 100 hours.

In the **Federal Register** of November 17, 2008 (73 FR 67873), FDA published a 60-day notice requesting public comment on the information collection provisions. The agency received one comment in support of the collection of information stating that it is necessary to help reprocessors of SUDs comply with section 502(u) of the act. The comment further stated that the estimated reporting burden did not appear excessive.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
502(u)	10	100	1,000	.1	100

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2902 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0026]

Apothecon et al.; Withdrawal of Approval of 103 New Drug Applications and 35 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 103 new drug applications (NDAs) and 35 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective March 13, 2009.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 7–335	Pronestyl (procainamide hydrochloride (HCl)) Capsules and Injection	Apothecon, c/o Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000
NDA 7–935	Phenergan (promethazine HCl) Tablets	Wyeth Pharmaceuticals, Inc., P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 9–193	Cogentin (benztropine mesylate) Tablets	Merck & Co., Inc., Sunneytown Pike, P.O. Box 4, BLA–20, West Point, PA 19486
NDA 9–986	Deltasone (prednisone) Tablets	Pharmacia & Upjohn Co., c/o Pfizer, Inc., 235 East 42d St., New York, NY 10017
NDA 10–374	Medihaler-Epi (epinephrine bitartrate)	3M Pharmaceuticals, 3M Center, Bldg. 0275–05–W–12, St. Paul, MN 55144–1000
NDA 10–375	Medihaler-ISO (isoproterenol)	Do.
NDA 10–598	Bendectin (doxylamine succinate and pyridoxine HCl) Tablets	Sanofi-Aventis, 300 Somerset Corporate Blvd., Bridgewater, NJ 08807–0977

Application No.	Drug	Applicant
NDA 10–796	Harmonyl (deserpidine) Tablets	Abbott Laboratories, 200 Abbott Park Rd., Abbott Park, IL 60064–6154
NDA 10–800	Tralgon (acetaminophen) Elixir	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000
NDA 10–927	Phosphotope (sodium phosphates solution USP) Oral Solution	Bracco Diagnostics, P.O. Box 5225, Princeton, NJ 08543–5225
NDA 10–928	Aureotope (gold injection)	Do.
NDA 11–161	Aristocort (triamcinolone) Tablets	Astellas Pharma US, Inc., Three Parkway North, Deerfield, IL 60015–2537
NDA 11–467	Trancopal (chlormezanone) Tablets	Sanofi-Aventis
NDA 11–721	Neptazane (methazolamide) Tablets	Lederle Laboratories, c/o Wyeth Pharmaceuticals, Inc., P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 11–751	Prolixin (fluphenazine HCl) Injection and Tablets	Apothecon, c/o Bristol-Myers Squibb Co.
NDA 11–832	Vasodilan (isoxsuprine HCl)	Do.
NDA 12–097	Kenalog in Orabase (triamcinolone acetonide dental paste USP)	Do.
NDA 12–164	Naturetin (bendroflumethiazide USP), 2.5 milligrams (mg), 5 mg, and 10 mg	Do.
NDA 12–515	Kenacort (tramcinolone diacetate) Syrup	Bristol-Meyers Squibb Co.
NDA 13–296	Duo-Medihaler (phenyleprine bitartrate and isoproterenol HCl)	3M Pharmaceuticals
NDA 13–601	Mucomyst (acetylcysteine solution USP)	Apothecon, c/o Bristol-Myers Squibb Co.
NDA 14–715	Triavil (perphenazine and amitriptyline HCl) Tablets	New River Pharmaceuticals, Inc., 2200 Kraft Dr., suite 2050, Blacksburg, VA 24060
NDA 15–419	Hipputope (iodohippurate sodium I-131 injection USP)	Bracco Diagnostics
NDA 16–033	Vontrol (diphenidol HCl) Tablets, 25 mg	GlaxoSmithKline, Five Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709
NDA 16–090	Rubratope-60 (cyanocobalamin CO-60)	Bracco Diagnostics
NDA 16–224	Robengatope (rose bengal sodium I-131 injection USP)	Do.
NDA 16–727	Prolixin Decanoate (fluphenazine decanoate) Injection	Bristol-Myers Squibb Co.
NDA 16–783	Vascoray (iothalamate meglumine, 52% and iothalamate sodium, 26% injection)	Tyco Healthcare/Mallinckrodt Inc., P.O. Box 5840, St. Louis, MO 63134–0840
NDA 16–906	Technetope II (technetium Tc-99m sodium pertechnetate sterile generator	Bracco Diagnostics
NDA 16–923	Tesuloid (technetium Tc-99m sulfur colloid kit)	Do.
NDA 16–929	FUDR (floxuridine) Injection, 500 mg/5 milliliters (mL)	Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045–5046
NDA 16–996	Hyperstat (diazoxide) Injection	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
NDA 17–024	Strotope (strontium nitrate Sr-85) Injection	Bracco Diagnostics
NDA 17–045	Renotec (technetium Tc-99m ferpenetate kit)	Do.
NDA 17–047	Sethotope (selenomethionine Se-75) Injection	Do.
NDA 17–269	Chlormerodrin Hg-197 Injection	Do.
NDA 17–339	Minitec (technetium Tc-99m sodium pertechnetate generator)	Do.

Application No.	Drug	Applicant
NDA 17–371	Pronestyl (procainamide HCl) Tablets	Apothecon, c/o Bristol-Myers Squibb Co.
NDA 17–395	Intropin (dopamine HCl) Injection, 40 mg/mL, 80 mg/mL, and 160 mg/mL	Hospira, Inc.
NDA 17–598	Septra (trimethoprim and sulfamethoxazole) Oral Suspension	Monarch Pharmaceutcals, Inc., 501 5th St., Bristol, TN 37620
NDA 17–685	Conray 325 (iothalamate sodium)	Mallinckrodt Inc., 675 McDonnell Blvd., P.O. Box 5840, St. Louis, MO 63134
NDA 17–787	Radionuclide-Labeled (I-125) Fibrinogen Sensor	Abbott Laboratories
NDA 17–834	Albumotope-LS (albumin aggregated iodinated I-131-serum)	Bracco Diagnostics
NDA 17–902	Renovue-65 (iodamide meglumine) Injection, 65%	Do.
NDA 17–903	Renovue-Dip (iodamide meglumine) Injection	Do.
NDA 17–931	Iletin I (insulin pork)	Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285
NDA 17–932	Protamine Zinc and Iletin I (insulin suspension protamine zinc beef/pork)	Do.
NDA 17–935	Ultralente Iletin I (insulin zinc suspension extended beef/pork)	Do.
NDA 17–936	NPH Iletin I (insulin suspension isophane beef/pork)	Do.
NDA 17–943	Proloprin (trimethoprim) Tablets, 100 mg and 200 mg	Monarch Pharmaceuticals, Inc.
NDA 17–970	Nolvadex (tamoxifen citrate) Tablets	AstraZeneca Pharmaceuticals LP, 1800 Concord Pike, P.O. Box 8355, Wilmington, DE 19803–8355
NDA 17–979	Heparin Sodium Injection USP	Abraxis Pharmaceutical Products, Riverway One, 6133 North River Rd., suite 500, Rosemont, IL 60018
NDA 18–017	Blocadren (timolol maleate) Tablets	Merck & Co., Inc., UG2C–50, P.O. Box 1000, North Wales, PA 19454–1099
NDA 18–061	Timolide (timolol maleate and hydrochorothiazide) Tablets, 10 mg/25mg	Do.
NDA 18–076	Cholovue (iodoxamate meglumine) Injection, 40.3%	Bracco Diagnostics
NDA 18–077	Cholovue (iodoxamate meglumine) for Infusion	Do.
NDA 18–116	Cyclocort (amcinonide) Cream, 0.1%	Astellas Pharma US, Inc.
NDA 18–211	Ditropan (oxybutynin chloride) Syrup, 5 mg	Ortho-McNeil-Janssen Pharmaceuticals, Inc., 1000 U.S. Highway 202, P.O. Box 3000, Raritan, NJ 08869–0602
NDA 18–344	Iletin II (insulin purified pork)	Eli Lilly & Co.
NDA 18–345	NPH Iletin II (insulin suspension isophane purified pork)	Do.
NDA 18–346	Protamine, Zinc, and Iletin II (insulin suspension protamine zinc purified pork)	Do.
NDA 18–347	Lente Iletin II (insulin zinc suspension purified pork)	Do.
NDA 18–354	Ortho-Novum 10/11-21 and 10/11-28 (norethindrone and ethinyl estradiol) Tablets	Ortho-McNeil Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC, 920 Rt. 202 South, P.O. Box 300, Raritan, NJ 08869
NDA 18–452	Septra (sulfamethoxazole and trimethorprim) Injection	Monarch Pharmaceuticals, Inc.

Application No.	Drug	Applicant
NDA 18–476	Protamine, Zinc, and Iletin II (insulin suspension protamine zinc purified beef)	Eli Lilly & Co.
NDA 18–477	Lente Iletin II (insulin zinc suspension purified beef)	Do.
NDA 18–478	Regular Iletin II (insulin purified beef)	Do.
NDA 18–479	NPH Iletin II (insulin suspension isophane purified beef)	Do.
NDA 18–498	Cyclocort (amcinonide) Ointment, 0.1%	Astellas Pharma US, Inc.
NDA 18–537	Tridil (nitroglycerin) Injection	Hospira, Inc.
NDA 18–831	Tracrium (atracurium besylate) Injection	Hospira, Inc.
NDA 18–873	Mexitil (mexiletine HCl) Capsules, 150 mg, 200 mg, and 250 mg	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368
NDA 18–922	Lodine (etodolac) Capsules and Tablets	Wyeth Pharmaceuticals, Inc.
NDA 19–085	Atrovent (ipratropium bromide) Aerosol	Boehringer Ingelheim Pharmaceuticals, Inc.
NDA 19–166	Regular Insulin (insulin zinc suspension beef) Injection	Eli Lilly & Co.
NDA 19–167	NPH Insulin Beef (insulin zinc suspension beef)	Do.
NDA 19–529	Humulin BR (insulin recombinant human)	Do.
NDA 19–729	Cyclocort (amcinonide) Lotion, 0.1%	Astellas Pharma US, Inc.
NDA 19–816	Oruvail (ketoprofen) Extended-Release Capsules	Wyeth Pharmaceuticals, Inc.
NDA 19–890	Stadol (butorphanol tartrate) Nasal Spray	Bristol-Myers Squibb Co.
NDA 19–965	Novolin L (insulin zinc suspension recombinant human)	Novo Nordisk, Inc., 100 College Road West, Princeton, NJ 08540
NDA 20–152	Serzone (nefazodone HCl) Tablets	Bristol-Myers Squibb Co.
NDA 20–219	Livostin (levocabastine HCl) Ophthalmic Suspension, 0.05%	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936–1080
NDA 20–225	Indur (isosorbide mononitrate) Extended-Release Tablets, 30 mg, 60 mg, and 120 mg	Schering Corp.
NDA 20–326	Neutrexin (trimetrexate glucuronate) Injection, 25 mg and 200 mg vials	MedImmune Oncology, Inc., One MedImmune Way, Gaithersburg, MD 20878
NDA 20–377	Cordarone (amiodarone HCl), Injection, 50 mg/mL	Wyeth Pharmaceuticals, Inc.
NDA 20–429	Orudis KT (ketoprofen) Tablets, 12.5 mg	Wyeth Consumer Healthcare, Five Giralda Farms, Madison, NJ 07940
NDA 20–584	Lodine XL (etodolac) Extended-Release Tablets	Wyeth Pharmaceuticals, Inc.
NDA 20–698	MiraLax (polyethylene glycol 3350) Powder for Solution	Braintree Laboratories, Inc., 60 Columbian Street West, P.O. Box 850929, Braintree, MA 02185–0929
NDA 20–784	Nasacort HFA (triamcinolone acetonide) Nasal Spray	Sanofi-Aventis
NDA 20–974	Prozac (fluoxetine HCl) Tablets	Eli Lilly & Co.
NDA 21–028	Velosulin BR (insulin recombinant injection)	Novo Nordisk, Inc.
NDA 21–369	Codeprex (codeine polistirex and chlorpheniramine polistirex) Extended-Release Suspension	UCB, Inc., 1950 Lake Park Dr., Smyrna, GA 30080
NDA 21–387	Pravigard Pak (copackaged) (pravastatin sodium and aspirin) Tablets	Bristol-Meyers Squibb Co.

Application No.	Drug	Applicant
ANDA 40–305	Meperidien HCl Injection USP, 10 mg/mL	Hospira, Inc.
NDA 50–155	Chloromycetin Sodium Succinate (chloramphenicol sodium succinate for injection USP)	Parkedale Pharmaceuticals, Inc., c/o King Pharmaceuticals, Inc., 501 5th St., Bristol, TN 37620
NDA 50–205	Chloromycetin (chloramphenicol) Otitic Solution	Do.
NDA 50–285	Mycifradin (neomycin sulfate) Oral Suspension	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 50–339	Albamycin (novobiocin sodium) Capsules	Do.
NDA 50–435	Geocillin (carbenicillin indanyl sodium) Tablets, 382 mg	Pfizer, Inc., 235 East 42d St., New York, NY 10017
NDA 50–504	Mandol (cefamandole nafate) Injection	Eli Lilly & Co.
NDA 50–589	Cefizox (ceftizoxime sodium)	Astellas Pharma US, Inc.
NDA 50–621	Suprax (cefixime) Tablets, 200 mg and 400 mg	Lederle Laboratories, c/o Wyeth Pharmaceuticals, Inc.
NDA 50–622	Suprax (cefixime) Powder for Suspension	Do.
ANDA 60–591	Chloromycetin (chloramphenicol capsules USP), 50 mg, 100 mg, and 250 mg	Parkedale Pharmaceuticals, Inc., c/o King Pharmaceuticals, Inc.
ANDA 61–922	Vidarabine Monohydrate Micronized Powder, Sterile	Do.
ANDA 62–655	Tazidime (ceftazidime for injection USP)	Eli Lilly & Co.
ANDA 63–350	Amikacin Sulfate Injection USP, 50 mg base/mL and 250 mg base/mL	Hospira, Inc.
ANDA 70–847	Metoclopramide Injection USP, 5 mg base/mL	Hospira, Inc.
ANDA 71–291	Metoclopramide Injection USP, 5 mg base/mL	Do.
ANDA 71–364	Acetylcysteine Solution USP	Do.
ANDA 71–365	Acetylcysteine Solution USP	Do.
ANDA 71–645	Droperidol Injection USP, 2.5 mg/mL	Do.
ANDA 73–272	Albuterol Inhalation Aerosol	IVAX Pharmaceuticals Ireland, c/o IVAX Pharmaceuticals, Inc., Two University Plaza, suite 220, Hackensack, NJ 07601
ANDA 74–966	Fluphenazine Decanoate Injection, 25 mg/mL	Hospira, Inc.
ANDA 75–106	Diltiazem HCl Injection, 5 mg/mL	Do.
ANDA 75–242	Labetalol HCL Injection, 5 mg/mL	Do.
ANDA 75–342	Butorphanol Tartrate Injection USP, 1 mg/mL and 2mg/mL	Do.
ANDA 75–396	Midazolam HCl Injection	Do.
ANDA 75–484	Midazolam HCl Injection, 5 mg base/mL	Do.
ANDA 75–571	Enalaprilat Injection, 1.25 mg/mL	Do.
ANDA 75–669	Famotidine Injection, 10 mg/mL	Do.
ANDA 75–705	Famotidine Injection, 10 mg/mL	Do.
ANDA 75–816	Calcitriol Injection	Do.
ANDA 75–830	Milrinone Lactate Injection, 1 mg base/mL	Do.
ANDA 75–108	Amiodarone HCl Injection, 50 mg/mL	Do.
ANDA 76–233	Paclitaxel Injection	Do.
ANDA 76–473	Carboplatin for Injection USP	Do.

Application No.	Drug	Applicant
ANDA 76–978	Ondansetron HCl and Dextrose Injection	Do.
ANDA 77–362	Amlodipine Besylate Tablets	King and Spalding, U.S. Agent for Genpharm Inc., 1700 Pennsylvania Ave., NW., Washington, DC 20006–4706
ANDA 77–925	Meloxicam Tablets, 7.5 mg and 15 mg	Roxane Laboratories, Inc., 1809 Wilson Rd., Columbus, OH 43228
ANDA 85–153	Alkergot (ergoloid mesylates) Sublingual Tablets, 0.5 mg	Sandoz, Inc., 227–15 North Conduit Ave., Laurelton, NY 11413
ANDA 85–916	Diethylpropion HCl Tablets, 25 mg	Do.
ANDA 86–172	Meclizine HCl Tablets, 12.5 mg	Do.
ANDA 86–174	Meclizine HCl Tablets, 25 mg	Do.
ANDA 86–184	Sulfasalazine Tablets, 500 mg	Do.
ANDA 87–417	Alkergot (ergoloid mesylates) Sublingual Tablets, 1 mg	Do.
ANDA 89–565	Vinblastine Sulfate Injection, 10 mg/vial	Hospira, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective March 13, 2009.

Dated: January 12, 2009.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E9–2901 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA2008E0091; Docket No. FDA2008E0099; Docket No. FDA2008E0204]

Determination of Regulatory Review Period for Purposes of Patent Extension; MACROPLASTIQUE IMPLANTS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MACROPLASTIQUE IMPLANTS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that medical device.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device MACROPLASTIQUE IMPLANTS. MACROPLASTIQUE IMPLANTS are indicated for transurethral injection in the treatment of adult women diagnosed with stress urinary incontinence (SUI) primarily due to intrinsic sphincter deficiency (ISD). Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for MACROPLASTIQUE IMPLANTS (U.S. Patent Nos. 5,258,028;. 5,336,263; and 5,571,182) from Uroplasty, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibilities for patent term restoration. In a letter dated May 6, 2008, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of MACROPLASTIQUE IMPLANTS represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MACROPLASTIQUE IMPLANTS is 2,651 days. Of this time, 1,973 days occurred during the testing phase of the

regulatory review period, while 678 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective*: July 30, 1999. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective on June 30, 1999. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on July 30, 1999, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: December 22, 2004. The applicant claims December 21, 2004, as the date the premarket approval application (PMA) for MACROPLASTIQUE IMPLANTS (PMA P040050) was initially submitted. However, FDA records indicate that PMA P040050 was submitted on December 22, 2004.

3. *The date the application was approved*: October 30, 2006. FDA has verified the applicant's claim that PMA P040050 was approved on October 30, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,640 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: January 17, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2903 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0043] (formerly Docket No. 2004D–0510)

Guidance for Industry: Referral Program From the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance document entitled ''Guidance for Industry: Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association.'' The revised guidance only changes the date on which FDA intends to stop issuing export certificates for fish or fishery products that are to be shipped to the European Union (EU) and the European Free Trade Association (EFTA). The date FDA now intends to stop issuing EU Export Certificates is June 17, 2009.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Food Safety (HFS–300), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments concerning the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: William Jones, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2300.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 15, 2009 (74 FR 2600) (the January 15 notice), FDA announced the availability of a guidance entitled ''Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association.'' In the January 15 notice, FDA announced that it: (1) Intends to proceed with a Certification Referral Program to the National Oceanic and Atmospheric Administration Seafood Inspection Program (NOAA SIP), without a 24-month test period, (2) intends to expand the program to include all fish and fishery products for export to the EU and EFTA, and (3) intends to stop issuing EU Export Certificates effective February 17, 2009. The agency stated that it intends to adopt this approach because the industry's demand for EU Export Certificates continues to rise dramatically, and FDA can no longer justify the use of our limited food safety resources for issuance of EU Export Certificates. The implementation of this guidance should free up resources that the agency can allocate for higher priority public health activities that are intended to protect the U.S. consuming public, while still providing a mechanism for the industry to continue obtaining EU certification. Seafood processors and other entities involved in the exporting of seafood to the EU may obtain EU Export Certificates from the NOAA SIP.

After publication of the January 15 notice, FDA received comments and has determined it would be beneficial to have more time to deliberate further on the policy issues presented by this action. Consequently, FDA is revising the guidance to announce that it intends to stop issuing EU Export Certificates on June 17, 2009.

FDA is issuing this guidance document as a level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA, NOAA SIP, or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments maybe seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: February 5, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2802 Filed 2–6–09; 12:00 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Improving Endpoints, Improving Care: Alpha-1 Antitrypsin Augmentation Therapy and Clinical Trials; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: Improving Endpoints, Improving Care: Alpha-1 Antitrypsin Augmentation Therapy and Clinical Trials. The purpose of the public workshop is to identify the most useful clinical trial endpoints and surrogate markers for Alpha-1 antitrypsin (AAT) augmentation therapy. FDA, Alpha-1 Foundation, and the Department of Health and Human Services, Office of Public Health and Science are convening this workshop to facilitate the design of future clinical trials intended to establish clinical efficacy of AAT products. The public workshop will feature presentations and panel discussions led by experts from academic institutions, government, and industry.

Date and Time: The public workshop will be held on March 23, 2009, from 8:30 a.m. to 5:30 p.m. and March 24, 2009, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Lister Hill Center Auditorium, Bldg. 38A, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone, and fax numbers) to the contact person by March 6, 2009. There is no registration fee for the public workshop. Early registration is recommended because seating is limited to 175 attendees. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: AAT deficiency is a genetic condition that leads to decreased levels of alpha-1 antitrypsin in the blood and significantly increases the risk of serious lung disease in adults and liver disease in infants, children, and adults. Intravenous augmentation therapy with FDA-licensed, plasma-derived AAT products has become the standard of care for treatment in the subset of patients with AAT deficiency who have moderate pulmonary disease. Since the original product approvals, additional data collection and advances in understanding of AAT deficiency suggest the need to revisit and improve clinical trial efficacy endpoints.

The public workshop will facilitate scientific discussions to identify the most relevant and feasible, currently available and future clinical trial efficacy endpoints for AAT augmentation therapy and further evaluate its usefulness to a broader patient population. Topics to be discussed include: (1) AAT deficiency disease characteristics, progression and pulmonary pathophysiology; (2) patient selection for clinical trials; (3) current challenges to the development of endpoints for clinical trials; and (4) currently available and future clinical trial endpoints, including functional markers of disease progression, and radiological and biochemical endpoints.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: February 6, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2905 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Cardiovascular and Renal 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: Cardiovascular and Renal 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 18, 2009, from 8 a.m. to 5 p.m.

Location: Marriott Conference Centers, UMUC Inn and Conference Center, 3501 University Blvd. East, Adelphi, MD. The hotel telephone number is 301–985–7385.

Contact Person: Elaine Ferguson, 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: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. 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: The committee will discuss new drug application (NDA) 22–425, dronedarone 400 milligrams oral tablets, Sanofi Aventis, for the proposed indication in patients with a history of, or current atrial fibrillation or atrial flutter, for the reduction of the risk of cardiovascular hospitalization or death. 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/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and 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 March 4, 2009. Oral presentations from the public will be scheduled approximately between 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 24, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 25, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson 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/oc/advisory/default.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 4, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–2862 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committee and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on the National Mammography Quality Assurance Advisory Committee (NMQAAC) and certain devices panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH).

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations will be accepted for current vacancies and for those that will or may occur through October 31, 2009. Because vacancies occur on various dates throughout the year, there is no cutoff date for the receipt of nominations.

ADDRESSES: All nominations for membership should be sent electronically to *CV@OC.FDA.GOV* or by mail to Advisory Committee Oversight and Management Staff (HF–4), 5600 Fishers Lane, Rockville, MD 20857. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/oc/advisory/default.htm*.

FOR FURTHER INFORMATION CONTACT: For specific committee questions, contact the following persons listed in table 1 of this document:

TABLE 1

Contact Person	Committee/Panel
Geretta P. Wood, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3993, e-mail: *Geretta.Wood@fda.hhs.gov*	Certain Device Panels of the Medical Devices Advisory Committee
Nancy M. Wynne, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *Nancy.Wynne@fda.hhs.gov*	National Mammography Quality Assurance Advisory Committee

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations for voting and nonvoting consumer representatives for the vacancies listed in table 2 of this document:

TABLE 2

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Circulatory System Devices Panel of the Medical Devices Advisory Committee—interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure	1—nonvoting	Immediately
Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee—doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, clinical laboratory medicine, endocrinology, and diabetes	1—nonvoting	March 1, 2009
Dental Products Panel of the Medical Devices Advisory Committee—dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy	1—nonvoting	November 1, 2009
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians	1–nonvoting	Immediately
Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee—experts with broad, cross-cutting scientific, clinical, analytical or mediation skills	1–nonvoting	Immediately
Microbiology Devices Panel of the Medical Devices Advisory Committee—infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, biofilm development; mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists	1–nonvoting	March 1, 2009
Ophthalmic Devices Panel of the Medical Devices Advisory Committee—ophthalmologists specializing in cataract and refractive surgery and vitreo-retinal surgery, in addition to vision scientists, optometrists, and biostatisticians practiced in ophthalmic clinical trials	1–nonvoting	November 1, 2009
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—orthopedic surgeons (joint, spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians	1	January 31, 2009
National Mammography Quality Assurance Advisory Committee—physicians, practitioners, or other health professionals whose clinical practice, research specialization, or professional expertise include a significant focus on mammography	2–nonvoting	February 1, 2009

II. Functions

A. NMQAAC

The committee advises FDA on the following topics: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

B. Certain Panels of the Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions of the Federal Food, Drug, and Cosmetic Act's (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, does the following: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

III. Criteria for Members

Persons nominated for membership as a consumer representatives on the committee/panels must meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

IV. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates of the agency's selection.

V. Nomination Procedures

All nominations must include a cover letter, a curriculum vita or resume (that includes the nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations will specify the advisory committee or panel(s) for which the nominee is recommended. Nominations will include confirmation that the nominee is aware of the nomination.

Any interested person or organization may nominate one or more qualified persons for membership as consumer representatives on the advisory committee/panels. Self-nominations are also accepted. Potential candidates will be required to provide detail information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of a conflict of interest. The nomination should specify the committee/panels of interest. The term of office is up to 4 years, depending on the appointment date.

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 4, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–2845 Filed 2–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HTLV–II Vector and Methods of Use

Description of Technology: The invention hereby offered for licensing is in the field of vaccines and vaccine vectors. More specifically the invention provides compositions and methods of use of HTLV–II viral vector. The vector comprises at least a portion of the HTLV–II genome encoding the gag, pro, and pol genes and lacking all or a portion of the pX region. A heterologous gene is inserted within the deletion of the pX region. The gene of interest may encode all or a portion of a protein that corresponds to a viral protein of a foreign virus. The viral vectors thus constructed are useful for inducing immune response to the viral protein from the foreign virus. In particular the invention claims vaccines against HIV and SIV.

Applications: The technology can be used for DNA-based vaccines.

Advantages:

- Vaccines based on HTLV–II vectors have exhibited the capability to eliciting T cell response effectively. In particular they induce specific CD4+ and CD8+ T cell response. Antibody response to the HTLV–II vector is almost undetectable. The vector is infectious, but highly attenuated, with respect to the wild type HTLV–II. Desirably, the HTLV–II viral vector induces antibodies that can participate in Antibody-Dependent-Cell-Mediated Cytotoxicity (ADCC), a mechanism that enhances its effectiveness.
- Most of the T-cell vaccines developed for HIV are based on microbial vectors that have limited replication capacity and do not persist in the host. Such vaccines do not protect macaques from SIV infection and their ability to protect against high virus load is merely transient (approximately six months). They are perceived to elicit too ''small T-cell responses'' that expand ''too late''. In addition, few of these vectors target mucosal sites, the first portal of HIV entry. In contrast, an HTLV–II based vaccine is anticipated to infect macaques and replicate at very low level in lymphoid tissue and particularly in the gut which may enable them to maintain sufficient level of effectors CD8 memory cells to decrease early seeding of the virus, and sufficient level of central memory cells in lymph nodes that may limit the broadcasting of the virus at distal sites. These features make an HTLV–II based vaccine for HIV an excellent unique candidate to target mucosal tissues and provide long lasting mucosal immunity to HIV. In addition, the HTLV–II infects dendritic cells both in vivo and in vitro, and the HTLV–II infected dendritic cells have a mature phenotype, suggesting that HIV antigens expressed within dendritic cells could be effectively presented to the immune system.
- HTLV–II is a human retrovirus with no clear disease associations neither in healthy nor in HIV infected individuals.
- HTLV shares many biological and molecular characteristics of HIV, including routes of transmission, a T-cell tropism and gut tropism.
- Based on the above, it is believed that HIV vaccines based on HTLV–II vector will exhibit superiority compared to other vaccines in development.

Development Status: At the present only in vitro as well as animal (macaques) data that demonstrate the

proof of concept are available. The data indicates that an HTLV–II based vaccine could replicate in the appropriate body compartment and confer immunity in humans. The inventors continue to work on the development of this approach.

Market: In spite of major global efforts of more than 25 years in developing a vaccine against HIV/AIDS, such a vaccine is still not in existence but yet very much needed for the fight against the global epidemic of HIV/AIDS. The market for HIV/AIDS drugs is currently at the level of approximately $6 billion a year and is expected to grow to $13 billion by the year 2015. Should an effective vaccine be developed the market for such a vaccine may exceed this level. The instant technology may offer superiority to existence approaches in the area of HIV vaccines and thus a huge commercial opportunity for pharmaceutical/vaccine enterprises as well as a major contribution for global public health.

Inventors: Genoveffa Franchini, Izabela Bialuk, Vibeke Andresen, Shari Gordon, Valentina Cecchinato, Francis Ruscetti, Kathryn Jones (NCI).

Publications: Paper in preparation.

Patent Status: U.S. Provisional Application No. 61/081,994 filed 18 Jul 2008 (HHS Reference No. E–269–2008/0–US–01).

Related Technologies: RhCMV SIV vaccine (Picker *et al.*).

Licensing Status: The technology is available for exclusive or non-exclusive licensing.

Licensing Contact: Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Animal Models & Retroviral Vaccine Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HTLV–II vectored HIV vaccines. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Adoptive Immunotherapy for Reestablishing HIV-specific Cytotoxic T-cell (CD8 T-cell) Function in HIV and AIDS Patients and Methods for Assessing the Reestablishment of CD8 T-cell Function

Description of Technology: This technology includes methods and compositions for rescuing or reestablishing the ability of HIV-specific, cytotoxic T-cells (CD8 T-cells) to proliferate and kill HIV-infected cells such as CD4 cells. Additionally, this invention provides a means for evaluating the ability of therapeutic vaccines or other therapies to reestablish CD8 T-cell function during HIV infection. As an immunotherapy, this technology involves treating peripheral blood mononuclear cells (PBMCs) from an HIV or AIDS patient to reestablish CD8 T-cell function and returning the treated cells to the patient. It is anticipated that this technology could provide an alternative to antiretroviral therapy (ART).

Background: This technology arose from research aimed at understanding why HIV infection does not progress in a subset of HIV-infected individuals, called long-term nonprogressors (LTNP). During the course of HIV infection HIV-specific CD8 T-cells from HIV progressors lose the ability to proliferate and kill HIV-infected cells using cytotoxins such as perforin and granzymes A and B. Unlike HIV progressors, it has been shown that CD8 T-cells from LTNP retain the ability to proliferate and use cytotoxins to kill HIV-infected cells. This technology provides a means for rescuing HIV-specific CD8 T-cell proliferation and cytotoxic functions in HIV progressors.

Applications:

- Treatment of HIV infection
- Assessing the effectiveness of therapeutic vaccines or other immune therapies

Advantages:

- Novel strategy for treating HIV infection
- Direct measure of the reestablishment of CD8 T-cell function
- Alternative to ART

Development Status: In vitro data available. Primate studies are underway.

Market:

- HIV therapeutics
- Immunotherapy and therapeutic vaccine development

Inventors: Mark Connors and Stephen Migueles (NIAID).

Publication: SA Migueles *et al.* Lytic granule loading of CD8+ T cells is required for HIV-infected cell elimination associated with immune control. Immunity. 2008 Dec 29;29(6):1009–1021.

Patent Status: U.S. Provisional Application No. 61/070,849 filed 27 Mar 2008 (HHS Reference No. E–146–2008/0-US–01).

Licensing Status: This invention is available for exclusive or non-exclusive licensing.

Licensing Contact: Sally Hu, Ph.D.; 301–435–5606, *HuS@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Richard Williams at 301–451–3522 for more information.

Humanized Monoclonal Antibodies That Specifically Bind Japanese Encephalitis Virus (JEV) and Their Use

Description of Technology: Japanese encephalitis virus (JEV) is the prototype virus of the Japanese encephalitis (JE) group belonging to the Flavivirus genus of the Flaviviridae family. Other members of the group include Kunjin virus, St. Louis encephalitis virus, and West Nile encephalitis virus (WNV). JEV is widely distributed in South Asia, Southeast Asia, and the Asian Pacific Rim. In recent years, JE epidemics have spread to previously unaffected areas, such as northern Australia, Pakistan, India and Indonesia. The JE outbreak in India during July to November of 2005 was the longest and most severe in recent years, affecting more than 5,000 persons and causing more than 1,000 deaths. It is estimated that JEV causes 35,000 to 50,000 cases of encephalitis, including 10,000 deaths and as many neurologic sequelae, each year. The wide geographical distribution and the existence of multiple strains, coupled with the high rate of mortality and residual neurological complications in survivors, make JEV infection an important public health problem. Until a JEV vaccine becomes generally available, passive immunization with potently neutralizing anti-JEV antibodies remains an attractive strategy for short-term prevention of and therapeutic intervention in encephalitic JEV infections.

From a panel of 11 Fabs recovered by different panning strategies, three highly potent neutralizing antibodies, termed Fabs A3, B2, and E3, which recognized spatially separated regions on the JEV virion were identified. These antibodies reacted with epitopes in different domains: The major determinant for Fab A3 was Lys179 (domain I), that for Fab B2 was Ile126 (domain II), and that for Fab E3 was Gly302 (domain III) in the envelope protein, suggesting that these antibodies neutralize the virus by different mechanisms. These three Fabs and derived humanized monoclonal antibodies (MAbs) exhibited high neutralizing activities against a broad spectrum of JEV genotype strains. In preclinical testing, the monoclonal antibodies of the technology significantly prolonged the average survival time compared to the control group, suggesting a therapeutic potential for use of MAb B2 in humans.

This application claims the antibodies described above, methods of preventing

and/or treating JEV with the antibodies, and diagnostics using the antibodies of the technology.

Application: Development of Japanese Encephalitis Virus (JEV) vaccines, therapeutics and diagnostics.

Development Status: Monoclonal antibodies have been synthesized and preclinical studies have been performed.

Inventors: Ana P. Goncalvez, Robert H. Purcell, Ching-Juh Lai (NIAID).

Publication: AP Goncalvez *et al.* Humanized monoclonal antibodies derived from chimpanzee Fabs protect against Japanese encephalitis virus in vitro and in vivo. J Virol. 2008 Jul;82(14):7009–7021.

Patent Status: U.S. Provisional Application No. 61/123,905 filed 10 Apr 2008 (HHS Reference No. E–142–2008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize ''Humanized Monoclonal Antibodies that Specifically Bind Japanese Encephalitis Virus (JEV) and Their Use''. Please contact Percy Pan at 301–451–3523 for more information.

Sialostatin Mediation Controls Blood-Feeding Success of the Tick Ixodes scapularis

Description of Technology: This invention offers an environmentally friendly alternative to existing acaricides (pesticides), and relates to vaccines against tick bites and the pathogens that the ticks may transmit.

Bites from the nymphal stage of *Ixodes scapularis* are associated with Lyme disease transmission in disease-endemic areas of central and eastern US. *Ixodes scapularis* nymphs are the key vector stage implicated in Lyme disease transmission, mainly due to their small size that makes timely detection difficult. Guinea pig vaccination against sialostatin L2, a secreted *Ixodes scapularis* salivary protein, can confer nymphal recognition and protection against the tick. Increased rejection rates, prolonged feeding time, and inflammation were observed in the vaccine group, indicating that a protective host immune response was elicited. Moreover, anti-sialostatin L2 titers correlate with weight reduction of nymphs by the end of feeding. These studies suggest that an essential action of sialostatin L2 can be blocked by host humoral immunity.

Applications: Use of Sialostatin L2 in a multi-component vaccine to protect against tick bites, and the pathogens that the ticks may transmit.

Advantages:

- Sialostatin L2 as an anti-tick vaccine will target the vector and therefore confer protection against all the pathogens that may be transmitted by the vector.
- An environmentally friendly alternative to acaricides.

Development Status: The technology is currently in the pre-clinical stage of development.

Market: Tick-borne diseases have alarmingly increased over the past years worldwide, affecting both human and animal populations. Lyme borreliosis is the most common and prevalent vector-borne human illness throughout the northern hemisphere. In the U.S., Lyme disease cases are steadily on the rise, exceeding the 23,000 reported to the CDC in 2005; while in Europe, the estimated cases are more than 50,000, making it a growing public health problem. Apart from transmitting the Lyme agent, the same tick species, of the genus *Ixodes*, serve as vectors for a repertoire of other human disease pathogens, such as viruses that cause tick-borne encephalitis, protozoa that cause babesiosis, and bacteria that cause granulocytic anaplasmosis, Q-fever, and Mediterranean spotted fever.

Inventors: Michalis Kotsyfakis (NIAID), José M.C. Ribeiro (NIAID), Jesus G. Valenzuela (NIAID), John Andersen (NIAID), Jennifer Anderson (NIAID), *et al.*

Publications:

1. M Kotsyfakis *et al.* Cutting edge: Immunity against a ''silent'' salivary antigen of the Lyme vector Ixodes scapularis impairs its ability to feed. J Immunol. 2008 Oct 15;181(8):5209–5212.
2. M Kotsyfakis *et al.* Selective cysteine protease inhibition contributes to blood-feeding success of the tick Ixodes scapularis. J Biol Chem. 2007 Oct 5;282(40):29256–29263.
3. M Kotsyfakis *et al.* Antiinflammatory and immunosuppressive activity of sialostatin L, a salivary cystatin from the tick Ixodes scapularis. J Biol Chem. 2006 Sep 8;281(36):26298–26307.

Patent Status:

- U.S. Provisional Application No. 60/963,332 filed 02 Aug 2007 (HHS Reference No. E–289–2007/0–US–01).
- PCT Patent Application No. PCT/US08/09075 filed 25 Jul 2008 (HHS Reference No. E–289–2007/1–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: RC Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases/Laboratory of Malaria and Vector Research/Vector Biology Section is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize potential applications based on the above mentioned patent and in regard to the protection from tick bites and the pathogens they transmit. Please contact Charles Rainwater, NIAID/OTD at 301–435–8617/or *crainwater@niaid.nih.gov* for more information.

A Parameterized Model for Simulating Microarrays

Description of Invention: The current invention describes a simulation procedure in which several parameters can be used to model microarray image formation. Over 20 model parameters, each governed by a probability distribution, control the signal intensity, spot geometry, spot drift, background effects, and the many kinds of noise that affect microarray images as a result of the manner in which they are formed. In practice, a simulated microarray image is generated according to a number of defined parameters and can be compared to a known value. An imaging procedure is then applied to the simulated microarray image to generate observed values. The known values can then be compared to the observed values to evaluate the imaging procedure.

The model can be used to measure the performance of imaging procedures designed to measure the true intensity of spots on microarrays. Modeling and simulation of microarray image formation is a key to benchmarking various signal processing tools being developed to estimate cDNA signal spots. Using a model to describe the true signal intensity not only helps in evaluating these tools, but also facilitates the understanding of various process interactions. The simulation program has been used extensively in the design of the microarray image-analysis program used at the National Human Genome Research Institute (NHGRI). This has been done by testing the accuracy of the analysis program on simulated images exhibiting troublesome noise conditions and then tuning the program to achieve better results.

The simulation procedure can be incorporated into hardware/software for

ease of use. The levels of foreground noise, background noise, and spot distortion can be set, and algorithms can be evaluated under varying conditions.

Applications:

• Microarray imaging

• Evaluation of gene expression

Advantages:

• Efficient and accurate microarray signal analysis

• Improved detection of weak targets and improved local background estimation for microarray spots

Development Status: Late stage.

Inventors: Yidong Chen (NHGRI) *et al.*

Publication: Y Balagurunathan, ER Dougherty, Y Chen, ML Bittner, JM Trent. Simulation of cDNA microarrays via a parameterized random signal model. J Biomed Opt. 2002 Jul;7(3):507–523.

Patent Status: U.S. Patent No. 7,363,169 issued 22 Apr 2008 (HHS Reference No. E–089–2003/0–US–03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov*.

System for Synergistic Combination of Multiple Automatic Induction Methods and Automatic Re-Representation of Data

Description of Invention: The present application describes a unique prototype of an advanced framework which relates to the field of multidimensional data mining, machine learning, and analysis that has been named COEV (for COEVolutional). COEV synergistically combines different methods of statistical analysis, neural networks, decision trees and genetic algorithms for the resolution of data queries. COEV automatically determines the optimal methods and data representations to apply at each step of inquiry and, as a result, can provide outcomes that are significantly more accurate than can be achieved by use of any one methodology alone. The invention uses an evolutionary learning technology to improve predictive outcomes with continued use. COEV is designed to advance the accuracy, flexibility, speed and ease of use of advanced data analysis technologies.

Characteristics of problems that are appropriate for the application of the COEV method are: (1) Appropriate for machine learning, in that there is a well-defined set of input variables and a clear prediction target; (2) difficult for traditional methods, and where a modest improvement in accuracy over existing machine learning methods (*e.g.*, neural networks) would be significant; (3) there is a large amount of training data, ideally thousands of cases.

Possible application areas of interest include the analysis of high-throughput screening data for pharmaceutical discovery, detecting patterns of fraud in insurance claims, or automating screening of medical images.

This invention requires further R&D and testing to make it a practical system for widespread use.

Applications:

• Machine learning

• High throughput screening analysis for pharmaceutical, biotechnology, and other industries

Advantages:

• More accurate interpretation and analysis of complex data networks

• Improved predictive outcomes with continued use (evolutionary learning)

Development Status: Early stage.

Inventors: Lawrence Hunter (NLM).

Patent Status: U.S. Patent No. 6,449,603 issued 10 Sep 2002 (HHS Reference No. E–118–1996/0–US–03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov*.

Computational Analysis of Nucleic Acid Information Defines Binding Sites

Description of Invention: Many approaches to determine whether a nucleotide change is a benign polymorphism or is associated with a genetic disease rely on sequence comparisons of a substantial number of individuals. This invention embodies a computational method that is able to predict whether a nucleotide change will have a deleterious effect. The claims of this invention relate to a computer program which has the novel feature in that it is designed to calculate the relative importance of a given nucleotide change. This program is unique in that it is capable of predicting the effect that a given nucleotide change would have on a particular sequence such as a known binding site. The method has been successfully applied to predicting the effects of changes at human splice junctions.

Further information is available at *http://www.ccrnp.ncifcrf.gov/~toms/walker/index.html*.

Applications:

• Predictive outcomes for genetic mutations

• Biomedical research

Development Status: Late stage.

Inventors: Thomas D. Schneider (NCI) *et al.*

Patent Status: U.S. Patent 5,867,402 issued 02 Feb 1999 (HHS Reference No. E–080–1995/0–US–01).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov*.

Dated: January 30, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–2820 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of any U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Constructs for Measuring Activated Arf5 in Cells

Description of Technology: Scientists at the National Institutes of Health have developed a series of fusion protein constructs that can quantify the levels of activated Arf5 in cells. Arf5 is a member of the Arf family of GTP binding proteins and is an important regulator of intracellular trafficking and actin-mediated cell motility. Arf family members have been implicated to play a role in the spread of cancer (metastasis) and in the movement of cancer cells into healthy tissues (invasion). The constructs are DNA sequences of various portions of the carboxyl-terminal end of the Rab11-

family interacting protein 3 (FIP3) expressed in the pGEX2T vector.

Application: Research tool to detect and quantify activated Arf5 in various laboratory procedures to analyze intracellular trafficking and cellular motility.

Advantages: To the best of our knowledge, this technology represents the first reported assay for the detection of activated Arf5.

Inventors: Paul A. Randazzo and Vi L. Ha (NCI).

Publications:

1. H Inoue *et al.* Arf GTPase-activating protein ASAP1 interacts with Rab11 effector FIP3 and regulates pericentrosomal localization of transferrin receptor-positive recycling endosome. Mol Biol Cell. 2008 Oct;19(10):4224–4237.

2. HY Yoon *et al.* In vitro assays of Arf1 interaction with GGA proteins. Methods Enzymol. 2005;404:316–332.

Patent Status: HHS Reference No. E–064–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies: Antibodies and Antisera Recognizing Members of the ArfGap Family of Proteins:

- HHS Reference No. E–220–2008/0—Research Tool.
- HHS Reference No. E–220–2008/1—Research Tool.
- HHS Reference No. E–220–2008/2—Research Tool.
- HHS Reference No. E–221–2008/0—Research Tool.
- HHS Reference No. E–221–2008/1—Research Tool.
- HHS Reference No. E–221–2008/2—Research Tool.
- HHS Reference No. E–222–2008/0—Research Tool.
- HHS Reference No. E–242–2008/0—Research Tool.
- HHS Reference No. E–243–2008/0—Research Tool.
- HHS Reference No. E–244–2008/0—Research Tool.
- HHS Reference No. E–245–2008/0—Research Tool.
- HHS Reference No. E–245–2008/1—Research Tool.
- HHS Reference No. E–252–2008/0—Research Tool.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Mouse Monoclonal Antibodies to MAD1, a Human Spindle Assembly Checkpoint Protein for Maintaining Chromosomal Segregation

Description of Technology: Scientists at the National Institutes of Health have developed mouse monoclonal antibodies against the human spindle assembly checkpoint protein, MAD1. The spindle assembly checkpoint in mitotic cell division regulates the fidelity of chromosome segregation during cell division. MAD1 is an important component of this checkpoint control, which if compromised, can lead to the initiation of cancer cell growth. These monoclonal antibodies are the first available antibodies against MAD1 and can be used in laboratory research and diagnostics.

Applications:

- Research tool in various laboratory procedures to identify and detect MAD1.
- Diagnostic tool for aneuploidy, the condition of having an abnormal number of chromosomes, which results in birth and developmental defects, such as Down syndrome.

Inventor: Kuan-Teh Jeang (NIAID).

Publication: K Haller *et al.* The N-terminus of rodent and human MAD1 confers species-specific stringency to spindle assembly checkpoint. Oncogene 2006 Apr 6;25(15):2137–2147.

Patent Status: HHS Reference No. E–119–2003/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize reagents for studying cell cycle checkpoint factors. Please contact Agnes Rooke at *rookeab@niaid.nih.gov* or by phone at 301–594–1697 for more information.

Dated: January 30, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–2821 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Prognostic Test for Breast Cancer Based on a 12 Gene Expression Signature

Description of Technology: The clinical course and survival times of patients with breast cancer varies greatly, consequently it is difficult to establish a prognosis for the disease. To improve patient prognosis, much effort has been made to identify biological markers that would allow precise staging of the cancer. When cells cannot repair minor damage to their DNA it leads to genetic instability which can produce gross abnormalities in chromosomes and the onset of a cancer. It is known that the magnitude of the abnormalities is strongly correlated with a negative prognosis for cancer. Thus, genetic instability can serve as a useful biomarker for establishing a prognosis for breast cancer patients. Presently, genetic instability is not directly accounted for in established prognostic tests.

Investigators at the National Cancer Institute (NCI) have developed a compact gene signature that detects genome instability in breast cancer cells. By comparing changes in expression levels of only 12 genes in malignant tissue to levels in normal breast tissue it is possible to detect the genetic abnormalities that are indicative of a poor prognosis. This method has potential to improve markedly the forecasting of clinical outcomes for breast cancer and help improve treatment of this disease.

Applications:

- Precise staging of women with breast cancer prior to commencing treatment.

• Discovery of therapeutics that alter genomic instability and improve breast cancer prognosis.

Advantages:

• Reduced number of genes to measure compared to available technologies.

• Prognosis independent of other cancer indicators, such as lymph node status.

• Improved prediction in low risk patients.

Market: It is estimated that in 2008 more than 184,000 Americans would be diagnosed with breast cancer. After lung cancer, breast cancer is the second most lethal cancer in women.

Development Status: Pre-clinical or clinical data available.

Inventors: Thomas Ried (NCI) *et al.*

Publications: Presently, none related to this invention.

Patent Status: U.S. Provisional Application No. 61/097,101 filed 15 Sep 2008 (HHS Reference No. E–215–2008/0-US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Genetics Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Prognostic Test for Breast Cancer Based on a 12 Gene Expression Signature. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

HMGN Polypeptides as Immune Enhancers and HMGN Antagonists as Immune Suppressants

Description of Technology: HMGN polypeptides are multidomain proteins known to function by binding DNA to regulate the transcription of certain genes inside cells. However, when a HMGN polypeptide is released extracellularly, it distinctly acts as a potent activator of the immune system. Because of this activity, it has potential use as a biological therapeutic for stimulating an immune response as well as a promising target for antagonist drugs to suppress a pathological inflammatory response.

Secreted HMGN acts as a potent recruiter and activator of dendritic cells, the cell principally responsible for initiating the immune response. Furthermore, it enables dendritic cells to preferentially induce a Th1-type T lymphocyte response that leads to enduring cellular immunity. Therefore, HMGN has potential use as a clinically effective immunoadjuvant for use in vaccines against tumors and many intracellular pathogens.

Investigators at the National Institutes of Health have developed compositions and methods for using HMGN and its derivatives as immunoadjuvants in combination, as mixtures or as chemical conjugates, with microbial or tumor antigens. HMGN has the advantage of being gene encoded so it can be fused to an antigen gene to produce recombinant fusion proteins or administered as a DNA vaccine. Conversely, HMGN could be exploited as a drug target to treat diseases that would benefit from shifting away the Th1-type immune response towards a Th2-type or humoral immune response. This would be beneficial for treatment of parasitic infections and inflammatory or autoimmune disorders.

Applications:

• As an immunostimulatory adjuvant to increase efficacy of preventive or therapeutic vaccinations against microbes or cancers.

• As an attractant and activator of dendritic cells.

• Antagonist drug development for suppressing Th1-type response.

Advantages:

• Less adverse effects expected compared to current immunoadjuvants since HMGN is produced by the human body.

• Highly effective polarizer of the immune response towards Th1-type immunity.

Development Status: Pre-clinical data available.

Market: Very few immunoadjuvants have reached clinical approval since the introduction of alum over half a decade ago. Currently, there is a need for safe and effective vaccine adjuvants to increase the effectiveness of preventive and therapeutic vaccines.

Inventors: De Yang *et al.* (NCI).

Publications: Presently, none related to this invention.

Patent Status: U.S. Provisional Patent No. 61/083,781 filed 25 Jul 2008 (DHHS Reference No. E–185–2008/0-US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; *vathyams@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Molecular Immunoregulation is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HMGN1. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Substituted IL–15

Description of Technology: Interleukin-15 (IL–15) is an immune system modulating protein (cytokine) that stimulates the proliferation and differentiation of T-lymphocytes. In the clinical context, IL–15 is being investigated for use in the treatment of diseases such as cancer. In vitro manufacture of IL–15 can be problematic.

The invention relates to substituted IL–15 amino acid sequences of one or more amino acids that are predicted to reduce or eliminate deamidation of a specific aspargine amino acid residue found within the IL–15 protein. Deamidation can lead to protein degradation and interfere with the pharmaceutical purification and processing of IL–15. The invention also provides potential substituted gene sequences that encode the substituted IL–15 amino acid sequences. The substituted IL–15 amino acid sequences may advantageously facilitate the refolding, purification, storage, characterization, and clinical testing of IL–15.

Applications: IL–15 immunotherapies.

Advantages: Potential decreased immunogenicity of pharmacologically active IL–15 expressed in *E. coli.*

Development Status: Concept Development Phase.

Market: Cancer immunotherapy; IL–15 based immunotherapies.

Inventors: David F. Nellis *et al.* (NCI/SAIC).

Patent Status: U.S. Provisional Application No. 61/049,165 filed 30 Apr 2008 (HHS Reference No. E–123–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute Biological Research Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the topic of this U.S. Provisional Patent Application. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Novel Protein Delivery System for Mammalian Cells

Description of Technology: Virus-like particles (VLPs) consist of viral structural proteins that are capable of

self-assembly into a nanoparticle, but are non-infectious because they lack viral nucleic acids. VLPs have been used in viral vaccines, such as those for human papilloma virus and hepatitis B. However, they also have great potential in other applications, such as cancer vaccines, transport of nucleic acids into target cells (gene therapy), and transport of biologics or other large molecules into target cells for therapeutic purposes. The present technology discloses a chimeric VLP containing a GAG-Cre recombinase fusion protein. This recombinase fusion protein retains Cre recombinase activity, and can excise a LOX-flanked gene in a transduced target cell. Experiments by Drs. Kaczmarczyk and Chatterjee have demonstrated that chimeric VLPs can be used to deliver functional fusion proteins into cells. The technology also provides for a two-VLP protein delivery system designed to deliver a protein of interest into a target cell. The present technology also discloses VLPs containing GAG-protein of interest (ex. GAG-Cre) co-packaged with GAG-protease to deliver protein of interest in target site as a fully-processed protein rather than as a fusion protein.

The claims in the pending patent application provide for virus-like particles, methods of making virus-like particles, and methods of using virus-like particles to deliver proteins to a cell. The claims also provide for methods of targeting a protein to a cell, methods of protein therapy and methods of treating diseases or disorders.

Applications:

- Intracellular targeted delivery of therapeutic proteins.
- *Ex vivo* use for expansion of stem cells for transplantation.
- Antigen loading of dendritic cells for cancer vaccination.

Market: The therapeutic protein market segment will have a projected $52.2 billion in sales in 2010.

Development Status: In vivo feasibility studies are in progress.

Patent Status: U.S. Patent Application No. 61/195,084 filed 03 Oct 2008 (HHS Reference No. E–010–2008/0–US–01).

Inventors: Deb K. Chatterjee and Stanislaw J. Kaczmarcyk (NCI/SAIC).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Advanced Technology Program, Protein Expression Laboratory, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: January 30, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–2822 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Islet Cell Distribution Coordinating Center.

Date: March 23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.* (Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2824 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Mental Health Special Emphasis Panel; Time-Sensitive Review.

Date: February 20, 2009.

Time: 1 p.m. to 5 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: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@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 Mental Health Special Emphasis Panel; Trauma in High-Risk Occupations.

Date: March 6, 2009.

Time: 10 a.m. to 12 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: Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–0004, *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertation Grants.

Date: March 10, 2009.

Time: 12 p.m. to 4 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: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Curriculum Development Applications.

Date: March 30, 2009.

Time: 1:30 p.m. to 5 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: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2825 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The Subcommittee meeting will be open to the public and the meeting will be conducted entirely as a conference call with Webinar.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Services Subcommittee Conference Call and Webinar.

Date: February 24th, 2009.

Time: 9 a.m. to 12 p.m. Eastern Time.

Agenda: To discuss comments on the ASD Services Roadmap and other issues related to ASD services.

Place: https://www1.gotomeeting.com/register/287708090

Conference Call: Dial: (888) 455–2920. Access code: 3857872.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Bethesda, MD 20892–9669, 301–443–6040, *iaccpublicinquiries@mail.nih.gov.*

Please Note: The subcommittee meeting will be open to the public through a conference call phone number and a web presentation tool on the Internet. Individuals who participate using these electronic services and need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. There may be an opportunity for members of the public to submit written comments during the subcommittee meeting through the web presentation tool. Submitted comments will be reviewed after the meeting. If you experience any technical problems with the web presentation tool, please contact GoToWebinar at (800) 263–6317.

To use the Webinar, the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended)

This notice is being published less than 15 days prior to the meeting due to the scheduling limitations of the members.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: February 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2826 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 on Aging Special Emphasis Panel, ASPRIN TRIAL.

Date: March 2, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@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 on Aging Special Emphasis Panel, Ad Patient Registry.

Date: March 30, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2844 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Human Genome Research Institute Special Emphasis Panel, Sequencing Technology.

Date: March 18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., State Suite, Washington, DC 20005.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, nakamurk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2829 Filed 2–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0017]

Voluntary Private Sector Accreditation and Certification Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Public meeting notice.

SUMMARY: This notice announces the date, time, location, and discussion topics for a stakeholder meeting open to the public to engage in dialogue with Department of Homeland Security (DHS) leadership and program managers regarding the Voluntary Private Sector Preparedness Accreditation and Certification Program (PS-Prep).

DATES: *Public Meeting:* Monday, February 23, 2009, 9 a.m.–2:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the American Red Cross Ballroom, Hall of Service, 1730 E Street, NW., Washington, DC 20006. Enter at the E Street entrance. This is not located at the Red Cross Headquarters. The nearest Metro stations are Farragut West (exit at 17th and I Street, walk south towards H Street for four blocks and turn right at E Street) and Farragut North (exit at Connecticut Avenue and K Street, walk south towards I Street for five blocks and turn right at E Street).

You may submit comments, identified by Docket ID FEMA–2008–0017, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. (All government requests for comments—even if, as in this case, they are not for regulatory purposes—are sent to this portal.)

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA–2008–0017 in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 845, Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket number (if available). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

Instructions: Any stakeholder or member of the public who wishes to attend the public meeting or make a presentation is requested to provide his or her name and contact details to include e-mail address and telephone number, no later than 5 p.m. Eastern Standard Time, Tuesday, February 17, 2009 via e-mail to the PS-Prep Program at *privatesectorpreparedness@hsi.dhs.gov,* or via telephone at (703) 416–8407. Everyone who plans to attend the meeting is respectfully requested to be present and seated by 8:45 a.m. Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to identify anticipated special needs as early as possible. Although every effort will be made to accommodate all members of the public, seating is limited and will be allocated on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Grant, Incident Management Systems Integration Division, National Preparedness Directorate, National Integration Center, 500 C Street, SW., Washington, DC 20472. Phone: 202–646–3850 or e-mail: *FEMA-NIMS@dhs.gov*.

SUPPLEMENTARY INFORMATION: On December 24, 2008, the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), published a **Federal Register** notice ''Voluntary Private Sector Accreditation and Certification Preparedness Program,'' announcing PS-Prep, a DHS program established under the authority of Title IX of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266, 338 (Aug. 3, 2007). *See* 73 FR 79140; also available at *http://www.regulations.gov/search/index.jsp* (Docket ID FEMA–2008–0017). As discussed in the notice, DHS is developing PS-Prep to raise the level of private sector preparedness through a number of means, including: (i) Establishing a system for DHS to adopt private sector preparedness standards; (ii) encouraging creation of those standards; (iii) developing a method for a private sector entity to obtain a certification of conformity with a particular DHS-adopted private sector standard, and encouraging such certification; and (iv) making preparedness standards adopted by DHS more widely available.

The December 24, 2008 **Federal Register** notice (Docket ID FEMA–2008–0017) seeks recommendations from private sector stakeholders and the public at large regarding the private sector standards that DHS should adopt, both initially and over time (73 FR at 79142). The December 24, 2008 **Federal Register** notice also states that DHS intends to hold two public meetings in Washington, DC to provide a forum for public comment (See 73 FR 79145).

This notice announces the second stakeholder outreach meeting. FEMA is hosting this public meeting to discuss issues of interest pertaining to PS-Prep. The purpose of this meeting is to provide an open forum for additional comment and dialogue with DHS on PS-Prep. Individuals desiring to participate will have the opportunity to make a brief, formal or informal, presentation of

not more than 10 minutes and then, if desired, engage in a questions and answers session with DHS staff responsible for implementing PS-Prep. The specific issues to be discussed at this meeting include any of the material addressed in the December 24, 2008 **Federal Register** notice to include (i) cost considerations, such as fees for standards, certification, and preparedness costs related to size of business enterprise; (ii) the impact of existing practices, standards and regulations on participation in PS-Prep; (iii) understanding the spectrum of private sector preparedness, specifically from self-declaration of conformance to third-party certification; (iv) the role of the Federal Government in private sector preparedness; (v) key factors that influence participation in PS-Prep; (vi) the number and type of standards to be adopted by DHS; (vii) scalability of the certification, specifically related to location, products, services, and organizational components; (viii) priorities for national preparedness compared to business preparedness; and (ix) suggestion for effective outreach strategies and tactics to promote PS-Prep.

Public attendance is encouraged.

Dated: February 3, 2009.

David Garratt,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E9–2927 Filed 2–10–09; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–300, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–300, Application To File Declaration of Intention; OMB Control No. 1615–0078.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 13, 2009.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via email at *rfs.regs@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0078 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form N–300. Should USCIS decide to revise the Form N–300 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form N–300.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–300. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Wweb site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: February 4, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–2770 Filed 2–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: National Interest Waivers; Supplemental Evidence to I–140 and I–485; OMB Control No. 1615–0063.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 13, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory

Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by email add the OMB Control No. (1615–0063) in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at one (1) hour per response.

An estimate of the total public burden (in hours) associated with the collection: 16,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: February 4, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–2778 Filed 2–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–11]

HECM Counseling Client Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The HECM Counseling Client Survey is used by HUD to obtain information directly from counseling recipients. This form is sent to the clients of a counseling agency as part of HUD's performance review of the agency.

DATES: *Comments Due Date: March 13, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and 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: HECM Counseling Client Survey.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–92911.

Description of the Need for the Information and Its Proposed Use: The HECM Counseling Client Survey is used by HUD to obtain information directly from counseling recipients. This form is sent to the clients of a counseling agency as part of HUD's performance review of the agency.

Frequency of Submission: On occasion, Other Onetime Submissions.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	500	1		.168		84

Total Estimated Burden Hours: 84.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9–2863 Filed 2–10–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–0015; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act).

DATES: To ensure consideration, written comments must be received on or before March 13, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public availability of comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–819477

Applicant: Malcolm Pirnie, Inc., Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: lesser long-nosed bat (*Leptonycteris yerbabuenae*), Mexican long-nosed bat (*Leptonycteris nivalis*), northern aplomado falcon (*Falco femoralis*), jaguar (*Panthera onca*), and Sneed's pincushion cactus (*Escobaria sneedii*) within Texas, New Mexico, and Arizona.

Permit TE–202295

Applicant: Chad Wesley Hargrave, Huntsville, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of Comanche Springs pupfish (*Cyprinidon elegans*) and Pecos gambusia (*Gambusia nobilis*) within Texas.

Permit TE–022190

Applicant: Arizona Sonora Desert Museum, Tucson, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Sonora tiger salamander (*Ambystoma mavortium stebbinsi*) and bonytail chub (*Gila elegans*) within Arizona.

Permit TE–204355

Applicant: Ecological Communications Corporation, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*) and golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–101264

Applicant: Vernadero Group, Tempe, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to transport and transplant Huachuca water umbel (*Lilaeopsis schaffneriana* spp. *recurva*) within Arizona.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 29, 2009.

Brian A. Millsap,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–2882 Filed 2–10–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N0003; 20124–11130000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Reviews of 23 Southwestern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 5-year reviews of 23 southwestern species listed under the Endangered Species Act of 1973 (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow adequate time to conduct this review, information submitted for our consideration must be received on or before May 12, 2009. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You should submit information on these species to the Service at the addresses listed under ''Public Comments'' in the **SUPPLEMENTARY INFORMATION** section. We will make information received in response to this notice of review available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate office named in ''Public Comments'' for species-specific information.

SUPPLEMENTARY INFORMATION:

Why is a 5-year review conducted?

Section 4(c)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed (delisted) from the

List of Endangered and Threatened Wildlife and Plants (50 CFR 17.12), or reclassified from endangered to threatened (downlisted), or from threatened to endangered (uplisted).

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the following 23 species since their original listings as either endangered (ashy dogweed, Canelo Hills ladies'-tresses, Comanche Springs pupfish, Davis' green pitaya, Gila chub, Gulf Coast jaguarundi, Huachuca water-umbel, Koster's springsnail, Little Aguja (=Creek) pondweed, masked bobwhite (quail), Mexican long-nosed bat, Nellie cory cactus, Noel's amphipod, Pecos assiminea snail, Pecos gambusia, Roswell springsnail, Texas poppy-mallow, and Zapata bladderpod) or threatened (Arkansas River shiner, bunched cory cactus, Chisos Mountains hedgehog cactus, Lloyd's Mariposa cactus, and Navajo sedge). If the present classification of any of these species is not consistent with the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in the Federal classification of that species. Any change in Federal classification would require a separate rulemaking process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 23 species listed in Table 1.

What information is considered in the review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

How are these species currently listed?

The List of Endangered and Threatened Wildlife and Plants (List) is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register**. The List is also available on our internet site at *http://www.fws.gov/endangered/wildlife.html.* In Table 1 below, we provide a summary of the listing information for the species under active review.

TABLE 1—SUMMARY OF THE LISTING INFORMATION

Common name	Scientific name	Status	Where listed	Final listing rule
Arkansas River shiner	*Notropis girardi*	T	AR, KS, NM, OK, TX	63 FR 64771.
ashy dogweed	*Thymophylla tephroleuca*	E	TX 49	FR 29232.
bunched cory cactus	*Coryphantha ramillosa*	T	TX	44 FR 64247.
Canelo Hills ladies'-tresses	*Spiranthes delitescens*	E	AZ	62 FR 665.
Chisos Mountain hedgehog cactus	*Echinocereus chisoensis var. chisoensis*	T	TX	53 FR 38453.
Comanche Springs pupfish	*Cyprinodon elegans*	E	TX	32 FR 4001.
Davis' green pitaya	*Echinocereus viridiflorus var. davisii*	E	TX	44 FR 64738.
Gila chub	*Gila intermedia*	E	AZ, NM	70 FR 66663.
Gulf Coast jaguarundi	*Herpailurus (=Felis) yagouaroundi cacomitli.*	E	TX	41 FR 24062.
Huachuca water-umbel	*Lilaeopsis schaffneriana var. recurva*	E	AZ	62 FR 665.
Koster's springsnail	*Juturnia kosteri*	E	NM	70 FR 46303.
Little Aguja (=Creek) pondweed	*Potamogeton clystocarpus*	E	TX	56 FR 57844.
Lloyd's Mariposa cactus	*Echinomastus ariposensis*	T	TX	44 FR 64247.
masked bobwhite (quail)	*Colinus virginianus ridgwayi*	E	AZ	32 FR 4001.
Mexican long-nosed bat	*Leptonycteris nivalis*	E	NM, TX	53 FR 38456.
Navajo sedge	*Carex specuicola*	T	AZ, UT	50 FR 19370.
Nellie cory cactus	*Coryphantha minima*	E	TX	44 FR 64738.
Noel's amphipod	*Gammarus desperatus*	E	NM	70 FR 46303.
Pecos assiminea snail	*Assiminea pecos*	E	NM, TX	70 FR 46303.
Pecos gambusia	*Gambusia nobilis*	E	NM, TX	35 FR 16047.
Roswell springsnail	*Pyrgulopsis roswellensis*	E	NM	70 FR 46303.
Texas poppy-mallow	*Callirhoe scabriuscula*	E	TX	46 FR 3184.
Zapata bladderpod	*Lesquerella thamnophila*	E	TX	64 FR 63745.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors:

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.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What could happen as a result of this review?

If we find that there is new information concerning any of the 23 species listed in Table 1 indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened; (b) reclassify the species from threatened to endangered; or (c) remove the species from the List. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

Public Comments

Submit information regarding the Canelo Hills ladies'-tresses (*Spiranthes delitescens*), Gila chub (*Gila intermedia*), Huachuca water-umber (*Lilaeopsis schaffneriana var. recurva*), and Navajo sedge (*Carex specuicola*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. The office phone number is 602–242–0210.

Submit information regarding the bunched cory cactus (*Coryphantha ramillosa*), Chisos Mountain hedgehog cactus (*Echinocereus chisoensis var. chisoensis*), Comanche Springs pupfish (*Cyprinodon elegans*), Davis' green pitaya (*Echinocereus viridiflorus var. davisii*), Little Aguja (=Creek) pondweed (*Potamogeton clystocarpus*), Lloyd's Mariposa cactus (*Echinomastus ariposensis*), Mexican long-nosed bat (*Leptonycteris nivalis*), Nellie cory cactus (*Coryphantha minima*), Pecos gambusia (*Gambusia nobilis*), and Texas poppy-mallow (*Callirhoe scabriuscula*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The office phone number is 512–490–0057.

Submit information regarding masked bobwhite (quail) (*Colinus virginianus ridgwayi*) to the Refuge Manager, Buenos Aires National Wildlife Refuge, P.O. Box 109, Sasabe, AZ 85633. The office phone number is 520–823–4251, extension 116.

Submit information regarding ashy dogweed (*Notropis girardi*) and Zapata bladderpod (*Lesquerella thamnophila*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service c/o TAMU–CC, Corpus Christi Ecological Services Field Office, 6300 Ocean Drive, Unit 5837, Corpus Christi, TX 78412. The office phone number is 361–994–9005.

Submit information regarding Gulf Coast jaguarundi (*Herpailurus* (=*Felis*) *yagouaroundi cacomitli*) to Jody Mays, Wildlife Biologist, Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, TX 78583. The office phone number is 956–748–3607.

Submit information regarding Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*), Pecos assiminea snail (*Assiminea pecos*), and Roswell springsnail (*Pyrgulopsis roswellensis*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113. The office phone number is 505–346–2525.

Submit information regarding the Arkansas River shiner (*Notropis girardi*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 222 S. Houston, Suite A, Tulsa, OK 74127. The office phone number is 918–581–7458.

Public Solicitation of New Information

We request any new information concerning the status of the 23 species listed in Table 1. See ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 30, 2009.

Brian A. Millsap,

Regional Director, Region 2.

[FR Doc. E9–2885 Filed 2–10–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930; CACA 7670 and CACA 7672]

Public Land Order No. 7723; Partial Revocation of Lighthouse Withdrawals Created by Two Executive Orders and Transfer of Administrative Jurisdiction; California

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of January 2, 2009, which had an incomplete **DATES** caption.

FOR FURTHER INFORMATION CONTACT: Duane Marti, 916–978–4675.

Correction

In the **Federal Register** of January 2, 2009, in FR Doc. E8–31242, on page 117, at the middle of the second column, ''**DATES:** January 2, 2009'' should read ''**DATES:** *Effective Date:* January 2, 2009.''

Dated: January 29, 2009.

Tom Pogacnik,

Deputy State Director, Natural Resources (CA–930).

[FR Doc. E9–2915 Filed 2–10–09; 8:45 am]

BILLING CODE 4310–15–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–004]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 19, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1022 (Review) (Refined Brown Aluminum Oxide from China)—briefing and vote. (The Commission is currently scheduled to

transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 2, 2009.)

5. Inv. Nos. 701–TA–454 and 731–TA–1144 (Final) (Welded Stainless Steel Pressure Pipe from China)—briefing and vote. (The Commission is currently schedule to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before March 2, 2009.)

6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 5, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–2847 Filed 2–10–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Review)]

Ceramic Station Post Insulators From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in November 2008 to determine whether revocation of the antidumping duty order on ceramic station post insulators from Japan would be likely to lead to continuation or recurrence of material injury. On December 12, 2008, the Department of Commerce published notice that it was revoking the order effective December 30, 2008, ''{b}ecause the domestic interested parties did not participate in this sunset review* * *'' (73 FR 75675). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov).*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: February 5, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–2908 Filed 2–10–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on February 5, 2009, a proposed consent decree in *United States* v. *Patriot Coal Corp. et al.*, Civil Action No. 2:09–cv–0099, was lodged with the United States District Court for the Southern District of West Virginia.

The proposed Consent Decree will resolve claims alleged in this action by the United States and the State of West Virginia against Patriot Coal Corporation et al. for the discharge of pollutants into waters of the United States in violation of Section 301 of the Act, 33 U.S.C. 1311, and in violation of the conditions and limitations of National Pollutant Discharge Elimination System (''NPDES'') permits issued by the State pursuant to Section 402 of the Act, 33 U.S.C. 1342, and W. Va. Code 22–11–8. Under the proposed Consent Decree, Defendants will perform injunctive relief including: Hiring a third-party consultant to develop and implement a company-wide compliance-focused environmental management system, creating a database to track information relevant to compliance efforts, conducting regular internal and third-party environmental compliance audits, implementing a system of tiered response actions for any potential future violations, conducting annual training for all employees and contractors with environmental responsibilities and/or responsibilities under the consent decree, and implementing stream restoration projects. In addition, Patriot will pay a civil penalty of $6.5 million.

The Department of Justice will accept comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcommentees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States* v. *Patriot Coal Corp. et al.*, Civil No. 2:09–cv–0099 (S.D.W.Va.) and D.J. Reference No. 90–5–1–1–09476.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of West Virginia, 300 Virginia Street, East, Charleston, WV 25301; and (2) United States Environmental Protection Agency (Region 3), 1650 Arch Street, Philadelphia, PA 19103. During the comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html.*

A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference No. 90–5–1–1–09476, and enclose a check in the amount of $32.5 for the consent decree (130 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–2788 Filed 2–10–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a registration under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR),

1301.34(a), this is notice that on January 6, 2009, Roche Diagnostics Operations Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 13, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 5, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–2904 Filed 2–10–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 6, 2009, Siegfried (USA), Inc., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 13, 2009.

Dated: February 5, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–2910 Filed 2–10–09; 8:45 am]

BILLING CODE 4410–09–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meetings; Sunshine Act

February 2, 2009.

TIME AND DATE: 10 a.m., Thursday, February 12, 2009.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *SCP Investments, LLC,* Docket Nos. SE 2006–148–M and SE 2006–163–M. (Issues include whether the Administrative Law Judge properly concluded that certain citations and orders issued to the operator should be vacated because the MSHA inspector did not allow the operator to exercise any walkaround rights during the inspection in question.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen (202) 434–9950 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E9–2970 Filed 2–9–09; 11:15 am]

BILLING CODE 6735–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

Time and Date: Wednesday, February 18, 2009 from 1:30 p.m. to 4:30 p.m.

Agenda: Sixteenth National Museum and Library Services Board Meeting:

I. Welcome.

II. Approval of Minutes.

III. Board Program: Community Revitalization: The Contributions of Libraries and Museums.
IV. Financial Update
V. Legislative Update.
VI. Board Updates.
VII. Adjournment.
(Open to the Public.)

PLACE: The meeting will be held in the Board Room of the Sofia Hotel, 150 W. Broadway, San Diego, California. Telephone: (619) 234–9200.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 et seq. The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: Wednesday, February 4, 2009.

Kate Fernstrom,

Chief of Staff.

[FR Doc. E9–2671 Filed 2–10–09; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 8:30 a.m., Wednesday, February 18, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

7976B, Marine Accident Report—Allision of Hong Kong-Registered Containership M/V Cosco Busan with the Delta Tower of the San Francisco-Oakland Bay Bridge, San Francisco, California, November 7, 2007.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, February 13, 2009.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 6, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–2951 Filed 2–9–09; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2008–0564]

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:* Requests to Non-Agreement States For Information.

2. *Current OMB approval number:* 3150–0200.

3. *How often the collection is required:* 8 times per year.

4. *Who is required or asked to report:* The 17 Non-Agreement States (those States and 2 territories that have not signed 274(b) Agreements with NRC).

5. *The number of annual respondents:* 136.

6. *The number of hours needed annually to complete the requirement or request:* 1122.

7. *Abstract:* Requests may be made of States that are similar to those of Agreement States to provide a more complete overview of the national program for regulating radioactive materials. This information would be used in the decisionmaking of the Commission. With Agreement States and as part of the NRC cooperative post-agreement program with the States pursuant to Section 274(b), information on licensing and inspection practices, and/or incidents, and other technical and statistical information are exchanged. Agreement State comments are also solicited in the areas of proposed implementing procedures relative to NRC Agreement State program policies. With the enactment of the Energy Policy Act of 2005, specifically Section 651(e), NRC now has regulatory authority over use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. Therefore, information requests sought may take the form of surveys, e.g., telephonic and electronic surveys/polls and facsimiles.

Submit, by April 13, 2009, 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–2008–0564. 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–2008–0564. Mail comments to NRC Clearance Officer, Gregory Trussell (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, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or

by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of January 2009.

For the Nuclear Regulatory Commission.

Gregory Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–2896 Filed 2–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on Tuesday, March 3, 2009, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 3, 2009, 8:30 a.m.–12:30 p.m.

The Subcommittee will review pellet clad interaction failures under extended power uprate conditions. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC and the industry. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Michael Benson (Telephone: 301–415–6396) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 4, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–2899 Filed 2–10–09; 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:

Rule 19a–1; SEC File No. 270–240; OMB Control No. 3235–0216.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), 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.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the ''Act'') [1] makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[2] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of security or other property (''capital gains'') and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 4600 series of registered investment companies that are management companies may be subject to rule 19a–1 each year, and that each portfolio on average mails two statements per year to meet the requirements of the rule.[3] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 9,200 burden hours.

The staff estimates that approximately one-third of the total annual burden (3,067 hours) would be incurred by a paralegal with an average hourly wage rate of approximately $168 per hour,[4] and approximately two-thirds of the annual burden (6,133 hours) would be incurred by a compliance clerk with an average hourly wage rate of $62 per hour.[5] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $895,502 ((3,067 hours × $168) + (6,133 hours × $62)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment

[1] 15 U.S.C. 80a.

[2] Section 4(3) of the Act (15 U.S.C. 80a–4(3)) defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

[3] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[4] Hourly rates are derived from the Securities Industry and Financial Markets Association (''SIFMA''), Management and Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[5] Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. 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@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 4, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2849 Filed 2–10–09; 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 Advocacy, Washington, DC 20549–0213.

Extension:
Form N–17f–2; SEC File No. 270–317; OMB Control No. 3235–0360.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *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–17f–2 (17 CFR 274.220) under the Act is entitled ''Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies.'' Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 (17 CFR 270.17f–2) by registered management investment companies (''funds'') maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates prepared under rule 17f–2. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper Commission file number and the correct name of a fund.

Commission staff estimates that on an annual basis it takes: (i) On average 1.25 hours of fund accounting personnel at a total cost of $188.75 to prepare each Form N–17f–2; [1] and (ii) .75 hours of clerical time at a total cost of $48.75 to file the Form N–17f–2 with the Commission.[2] Approximately 300 funds currently file Form N–17f–2 with the Commission, and each fund is required to make three filings annually for a total annual hourly burden per fund of approximately 6 hours at a total cost of $712.50. The total annual hour burden for Form N–17f–2 is therefore estimated to be approximately 1800 hours. Based on the total annual costs per fund listed above, the total cost of Form N–17f–2's collection of information requirements is estimated to be approximately $213,750.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by Form N–17f–2 is mandatory for those funds that maintain custody of their own assets. Responses will not be 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.

[1] This estimate is based on the following calculation: 1.25 × $151 (fund senior accountant's hourly rate) = $188.75.

[2] This estimate is based on the following calculation: .75 × $65 (secretary hourly rate) = $48.75.

[3] This estimate is based on the following calculation: 300 funds × $712.50 (total annual cost per fund) = $213,750.

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@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 4, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2850 Filed 2–10–09; 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:
Regulation S–B, OMB Control No. 3235–0417, SEC File No. 270–370.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation S–B (17 CFR 228.10, 228.101—228.103, 228.201—228.202, 228.303—228.308, 228.310, 228.401—228.407, 228.501—228.512, 228.601, 228.701—228.703) specifies the non-financial disclosure requirements applicable to registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and registration statements under Section 12, annual and other reports under Sections 13 and 15(d), going-private transaction statements under Section 13, tender offer statements under Sections 13 and 14, annual reports to security holders and proxy and information statements under Section 14 and any other documents required to be filed by small business issuers under the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78m, 78n, 78o(d)). Regulation S–B is

assigned one burden hour for administrative convenience. Regulation S–B will expire on March 15, 2009.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 4, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2851 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59361, File No. 4–518]

Joint Industry Plan; Order Approving Amendment To Add the BATS Exchange, Inc. as Participant to National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS

February 5, 2009.

I. Introduction

On September 19, 2008, the BATS Exchange, Inc. (''BATS'' or ''BATS Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') in accordance with Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 of Regulation NMS,[2] a proposed amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS (''Joint-SRO Plan'' or ''Plan'').[3] Under the proposed amendment, BATS would be added as a participant to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal through February 5, 2009 were published in the **Federal Register** on October 8, 2008.[4] The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

II. Discussion

The Joint-SRO Plan establishes procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange SM), International Securities Exchange LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. The proposed amendment would add BATS as a participant to the Joint-SRO Plan.

Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section II(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. BATS submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment is consistent with the requirements of Section 11A of the Act,[5] and Rule 608 of Regulation NMS.[6] The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include BATS as a participant in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow BATS to become a participant in the Joint-SRO Plan. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.[7]

III. Conclusion

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act [8] and Rule 608 of Regulation NMS,[9] that the amendment to the Joint-SRO Plan to add BATS as a participant is approved and BATS is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2857 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 12, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[4] *See* Securities Exchange Act Release No. 58695 (September 30, 2008), 73 FR 58993.

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

staff members who have an interest in the matters also may be present.

The Acting 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 Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 12, 2009 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; 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 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–2848 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59357; File No. SR–CBOE–2009–005]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

February 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 30, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, 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, 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 these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $10,175 per month. Both access fees are currently set at the indicative lease rate (as defined below) for January 2009. The Exchange proposes to adjust both access fees effective at the beginning of February 2009 to be equal to the indicative lease rate for February 2009 (which is $10,471). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $10,471 per month commencing on February 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for February 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of February 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of January 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of February 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. 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–CBOE–2009–005 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–2009–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–005 and should be submitted on or before March 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2773 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59359; File No. SR–CBOE–2008–123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Adopt a Trade, Flash and Cancel Order Type for CBSX

February 4, 2009.

On December 3, 2008, Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Trade, Flash and Cancel order type for the CBOE Stock Exchange (''CBSX''). The proposed rule change was published for comment in the **Federal Register** on January 2, 2009.[3] The Commission received no comments regarding the proposal.

The Commission has carefully reviewed the proposed rule change and 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 [4] and, in particular, Section 6(b)(5) of the Act,[5] which requires that an exchange have rules designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission also believes that the proposed rule change furthers the objectives of Section 11A of the Act,[6] as it helps to assure the economically efficient execution of securities transactions, fair competition among

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59147 (December 22, 2008), 74 FR 150.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1.

brokers and dealers and among exchange markets, and the practicability of brokers executing investors' orders in the best market.

If CBSX is at quoting at the national best bid or offer (''NBBO'') when a Trade, Flash and Cancel order is submitted to CBSX, CBSX will execute the incoming order automatically against the published quotation. However, if CBSX is not quoting at the NBBO, the Trade, Flash and Cancel designation initiates a process whereby the order would be electronically exposed to CBSX traders for a period of up to three seconds, rather than routed away to other markets, in accordance with Exchange Rule 52.6(a). CBSX traders will not know the identity or the account type of the party that submitted the Trade, Flash and Cancel order.[7] CBSX traders can respond with orders that match or better the NBBO to trade with the Trade, Flash and Cancel order. If no CBSX trader matches or improves on the NBBO by the end of the exposure period, the CBSX system will cancel the Trade, Flash and Cancel order. In no event will an execution result that is inferior to the NBBO.[8] Use of the Trade, Flash and Cancel order is strictly voluntary. The Commission believes that the Trade, Flash and Cancel order type is a potentially useful means for order senders to control where their orders are routed and to seek price improvement. Therefore, the Commission believes that the proposal is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–2008–123) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2774 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael Gaw, Assistant Director, and Andrew Madar, Special Counsel, Division of Trading and Markets, Commission, dated February 3, 2009.

[8] The Exchange stated that, ''If a flash responder attempts to trade against the order by matching the flash price (the NBBO price at the time the order was received by the CBSX System), the order will be executed unless the system determines at the point of execution that the flash price is worse than a revised NBBO in which case the order will be cancelled.'' *See* e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael Gaw, Assistant Director, and Andrew Madar, Special Counsel, Division of Trading and Markets, Commission, dated December 19, 2008.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59358; File No. SR–FINRA–2008–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Require Arbitrators To Provide an Explained Decision Upon the Joint Request of the Parties

February 4, 2009.

I. Introduction

The 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 October 14, 2008 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 12214, 12514 and 12904 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rules 13214, 13514 and 13904 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code,'' and together with the Customer Code, the ''Codes'')[3] to require arbitrators to provide an explained decision upon the joint request of the parties. The proposed rule change was published for comment in the **Federal Register** on October 31, 2008.[4] The Commission received five comments in response to the proposed rule change.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The former NASD Rule 12000 Series (Customer Code) and 13000 Series (Industry Code) have been adopted as the FINRA 12000 Series (Customer Code) and 13000 Series (Industry Code) in the new consolidated rulebook pursuant to SR–FINRA–2008–021, which was approved by the Commission. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021) (approval order). The FINRA Rule 12000 Series (Customer Code) and 13000 Series (Industry Code), as set forth in SR–FINRA–2008–021, became effective on December 15, 2008. *See* FINRA Regulatory Notice 08–57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

[4] *See* Securities Exchange Act Release No. 58862 (October 27, 2008), 73 FR 64995 (October 31, 2008), (SR–FINRA–2008–051) (notice).

[5] *See* letter from Kevin Thomas Hoffman, dated November 10, 2008 (''Hoffman letter''); letter from Barbara Black, Director, Corporate Law Center, University of Cincinnati College of Law, Jill I. Gross, Director, Pace Investor Rights Clinic, Pace University School of Law, and Deborah Sommers, Student Intern, submitted November 20, 2008 (''Black and Gross letter''); letter from Barry D. Estell, dated November 20, 2008 (''Estell letter''); letter from Scott R. Shewan, Vice-President, Public Investors Arbitration Bar Association, dated November 21, 2008 (''PIABA letter''); and letter from Theodore M. Davis, submitted November 21, 2008 (''Davis letter'').

II. Description of the Proposed Rule Change

FINRA proposed to amend its Customer Code and Industry Code to require arbitrators to provide an explained decision upon the joint request of the parties. The explained decision would be a fact-based award stating the general reason(s) for the arbitrators' decision; it would not be required to include legal authorities and/or damage calculations. Under the proposed rule change, parties would be required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date.[6] The chairperson would: (1) Be required to write the explained decision; and (2) receive an additional honorarium of $400 for writing the decision. The panel would allocate the cost of the additional honorarium to the parties as part of the final award.

The arbitrators would not be required to provide an explained decision in cases resolved without a hearing under simplified arbitration Rules 12800 and 13800 or in default cases conducted under Rules 12801 and 13801.

FINRA did not propose to amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale. This means that arbitrators would continue to be permitted to decide, on their own, to write an explained decision. Thus, as is currently the case, if the panel decides on its own to write an explained decision, FINRA would not pay an additional honorarium to any panel member.

Background

The absence of explanations in awards is a common complaint of non-prevailing parties in the FINRA forum, especially customers and associated persons. In order to address these complaints and increase investor confidence in the fairness of the arbitration process, in March 2005, FINRA filed a proposed rule change with the SEC that would have required arbitrators to provide explained decisions upon the request of customers, or of associated persons in industry controversies. The SEC published the original proposed rule

[6] The term ''hearing'' means the hearing of an arbitration under Rules 12600 and 13600 (*see* Rules 12100(m) and 13100(m)).

change for comment in July 2005.[7] The SEC received almost two hundred comment letters in response to the original proposed rule change, many of which were critical.

While FINRA was considering its next steps, there were several new developments related to explained decisions in other contexts. FINRA filed with the Commission dispositive motions[8] and expungement procedures[9] proposals, both of which require arbitrators to write an explanation for granting relief. In addition, the Securities Industry Conference on Arbitration (SICA) conducted a ''Perceptions of Fairness'' survey of participants in securities arbitration proceedings.[10] The survey results, released in February 2008, indicate that 55.5% of customers who responded to the survey would be ''more satisfied if they had an explanation in the award.'' In light of the comments, and these later developments, FINRA withdrew the original proposed rule change as filed in SR–NASD–2005–032 and filed a new proposed rule change. Key provisions of the proposed rule change are discussed in more detail below, together with related comments from the original proposed rule change.

Parties Must Jointly Request an Explained Decision

The original proposed rule change would have permitted a customer, or an associated person in an intra-industry controversy, to require an explained decision. Many commenters objected to the one-sided nature of that provision. Under the new proposed rule change, all parties to a case would have to agree to an explained decision. Moreover, while the arbitrators will be resolving the entire matter and the explained decision would normally address all the claims asserted by the parties, the parties may request that an explained decision address only certain claims. According to FINRA, requiring the parties' joint agreement to an explained decision is consistent with FINRA's general policy to accommodate a joint request of the parties.

Parties Must Submit Any Request for an Explained Decision 20 Days Before the First Scheduled Hearing Date

The new proposed rule change would provide that parties must submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date. This deadline coincides with the time that parties must exchange documents and identify witnesses they intend to present at the hearing. In FINRA's view, this approach would establish a clear deadline, give the parties sufficient time to request an explained decision, and provide notice to the arbitrators that an explained decision will be required before the hearing begins.

The Chairperson Must Write the Explained Decision

The new proposed rule change would require that the chairperson write the explained decision. The original proposed rule change contemplated that any of the arbitrators, or all of them, might draft the decision. Many commenters on the original proposed rule change were concerned that poorly written decisions might harm the public's perception of arbitration, or increase the likelihood of a party successfully vacating an award. To address these concerns, the rule would require that the chairperson write the decision.

Under the Codes, arbitrators must meet specific experience and training criteria to serve as chairpersons in arbitrations.[11] Therefore, chairpersons may be more experienced than non-chairpersons and should be better able to produce higher quality explained decisions. Further, assigning this responsibility to the chairperson would eliminate any confusion over who would be responsible for drafting the decision and would streamline the decision writing process. Having one arbitrator draft the decision after all the arbitrators have been consulted would reduce the time required to complete the decision. Once the decision was drafted, the arbitrators still would be required to sign the decision as provided in Rules 12904(a) and 13904(a).[12]

The Explained Decision Must Be Fact-Based

Under the new proposed rule change, the explained decision would be a fact-based award stating the general reason(s) for the arbitrators' decision.[13] The award would not be required to include legal authorities and damage calculations. FINRA believes that requiring only fact-based reasons in explained decisions will reduce the potential for misstatements in an award, thereby decreasing the possibility of a subsequent vacatur, modification or remand of an award and ensuring the continued finality of a FINRA award. FINRA believes the proposed rule change would provide the parties with the information they want while simultaneously maintaining the expediency, flexibility, and finality of arbitration.

Only the Chairperson Will Be Compensated for an Explained Decision

The original proposed rule change did not address who would have been responsible for preparing the explained decision and provided that each arbitrator would be paid an additional $200 honorarium for cases in which an explained decision was required. Under the new proposed rule change, only the chairperson would write the decision,

[7] *See* Securities Exchange Act Release No. 52009 (July 11, 2005); 70 FR 41065 (July 15, 2005) (SR–NASD–2005–032) (notice).

[8] FINRA filed the proposed dispositive motion rule on November 2, 2007 (SR–FINRA–2007–021). The proposal was published for comment on March 20, 2008 (*see* Securities Exchange Act Release No. 57497 (March 14, 2008); 73 FR 15019). The Commission approved the proposal on December 31, 2008 (*see* Securities Exchange Act Release No. 59189 (December 31, 2008); 74 FR 731 (January 7, 2009)).

[9] FINRA filed an expungement procedures proposal on March 13, 2008 (SR–FINRA–2008–010). The proposal was published for comment on April 3, 2008 (*see* Securities Exchange Act Release No. 57572 (March 27, 2008); 73 FR 18308). The Commission approved the proposal on October 30, 2008 (*see* Securities Exchange Act Release No. 58886 (October 30, 2008); 73 FR 66086 (November 6, 2008)).

[10] Jill I. Gross and Barbara Black, Perceptions of Fairness of Securities Arbitration: An Empirical Study, (February 6, 2008). The report can be downloaded at *http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1477&context=lawfaculty*.

[11] Pursuant to Rules 12400 and 13400, arbitrators are eligible for the chairperson roster if they have completed FINRA chairperson training and:

- Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

On June 23, 2008, the SEC approved a proposal to eliminate the Code provision allowing arbitrators to serve as Chairpersons provided they have ''substantially equivalent training or experience'' in lieu of completing FINRA Dispute Resolution's Chairperson training course (*see* Securities Exchange Act Release No. 58004 (June 23, 2008); 73 FR 36579 (June 27, 2008) (SR–FINRA–2008–009) (approval order). This rule became effective on September 22, 2008.

[12] Rules 12904(a) and 13904(a) require all awards to be in writing and signed by a majority of the arbitrators or as required by applicable law.

[13] While Rules 12604 and 13604 provide that the panel decides what evidence to admit and is not required to follow state or federal rules of evidence, FINRA intends that, as with current arbitration awards, explained decisions will have no precedential value in other cases. Thus, arbitrators will not be required to follow any findings or determinations that are set forth in prior explained decisions. In order to ensure that users of the forum are aware of the non-precedential nature of explained awards, FINRA plans to revise the template for all awards to include the following sentence: ''If the arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.''

and only the chairperson would be paid an additional honorarium. The additional honorarium paid to the chairperson would reflect the increased effort involved in drafting an explained decision. Under the new proposed rule change, the panel may allocate the cost of the honorarium to one party, or may allocate it between or among all parties.[14]

Parties May Not Require Explained Decisions in Some Cases

Under the new proposed rule change, parties would not be able to require explained decisions in two types of arbitration proceedings. The first is simplified arbitrations that are decided solely upon the pleadings and evidence filed by the parties, as described in Rules 12800 and 13800. The second is arbitrations that are conducted under the default procedures provided for in Rules 12801 and 13801. According to FINRA, explained decisions would not be appropriate in either of these situations because of the abbreviated nature of these arbitration proceedings.

Arbitrators May Choose To Write Explained Decisions in Other Circumstances

Under the new proposed rule change, arbitrators would continue to be permitted to decide, on their own or upon the motion of one party, to write an explained decision. Arbitrators would not receive an additional honorarium if the panel issues an explained decision that is not required under the proposed rules. The new proposed rule change would not affect the current rule that permits arbitrators to include a rationale in an award, even if the parties have not requested it, and would not encourage arbitrators to write an explained decision when they are not asked to do so by all the parties.

III. Comment Letters

The SEC received five comment letters.[15] Three commenters essentially supported the proposal [16] and two opposed it.[17] The Commission also received FINRA's response to comments, which is discussed below.[18]

One commenter supported the proposal, but asserted that every panel should provide a brief explanation for each award.[19] Another commenter supported the proposal but expressed concerns that investors' perceptions concerning the unfairness of the arbitration process would increase in circumstances in which an industry party blocks an investor's request for an explained decision.[20] One commenter argued that only the investor should be able to request an explained decision.[21]

FINRA responded to these comments by stating that under FINRA's original proposal (which has since been withdrawn), arbitrators would have been required to provide explained decisions upon the request of customers, or of associated persons in industry disputes.[22] FINRA stated that many commenters on that proposal objected to the one-sided nature of the proposal.[23] In addition, FINRA noted that a number of commenters were concerned that the proposal would lead to an increase in motions to vacate based on the arbitrators' explanations.[24]

FINRA further asserted that one of the benefits of arbitration is that it is final and binding, and courts rarely vacate awards.[25] In light of this, FINRA stated that any risks that may be associated with explained decisions should be borne by the parties only after they have agreed jointly to request an explained decision.[26] For these reasons, FINRA declined to amend the provision that requires joint agreement of the parties.[27]

One commenter stated that the proposal does not provide sufficient guidance to arbitrators.[28] The commenter asserted that the rule is ambiguous concerning the extent of the fact-based detail sufficient to constitute an explanation, and that the proposal is silent on whether the explanation would have to address every legal theory presented.[29]

FINRA responded by stating that the proposed rule specifies that a fact-based decision includes the general reasons for the arbitrators' decision, and that arbitrators do not have to include legal authorities or damage calculations.[30] FINRA stated that the proposal, as filed, gives the arbitrators the flexibility they need to tailor each award to the specific case being decided.[31] FINRA further responded by stating that the proposal requires the chairperson of the panel to write the explained decision.[32] Because chairpersons have completed chairperson training and have served as arbitrators through award on at least two arbitrations,[33] FINRA stated that requiring the chairperson to write the explained decision will ensure that parties are provided with the information called for in the proposed rule change.[34] Therefore, FINRA declined to amend the proposal to add further explanation regarding the content of the fact-based decision.[35]

One commenter argued that requiring a joint request for an explained decision eliminates the need for the proposal.[36] The commenter noted that FINRA already fosters a policy of accommodating parties' joint requests. Another commenter asked whether, under the current Codes, a panel would be required to write a reasoned decision if the parties made a joint request.[37] FINRA responded by stating that the panel currently is not required to accede to a joint request for an explained decision.[38] FINRA explained that under current practice, FINRA would forward the parties' joint request for an explained decision to the arbitrators, but that the arbitrators could decline the parties' request.[39] FINRA further stated that the proposed rule change would make it clear that arbitrators must provide an explained decision upon the joint request of the parties, set a timetable for such requests and provide for compensation for the chairperson's efforts in writing the explained

[14] Under the Customer and Industry Codes, the panel has the authority to assess fees in connection with discovery-related motions, contested subpoena requests, and hearing session fees to one party, or may split the fees between or among all parties.

[15] *See* note 5, *supra*.

[16] *See* Hoffman, Black and Gross, and Davis letters. The Hoffman letter supported the proposal with reservations. The Davis letter supported the proposed rule change with the caveat that the SEC re-visit FINRA's chair eligibility rules. FINRA did not propose to amend the chair eligibility rules in this proposal (*see* Rules 12400(c) and 13400(c)). Therefore, FINRA determined that the chair eligibility issue is outside the scope of the rule proposal and FINRA did not address it in its response to comments.

[17] *See* Estell and PIABA letters. FINRA did not address the concerns raised by the Estell letter, as it viewed those concerns as outside the scope of the rule proposal.

[18] Letter from Margo A. Hassan, FINRA, dated December 15, 2008 (''FINRA Letter'').

[19] *See* Hoffman letter.

[20] *See* Black and Gross letter.

[21] *See* PIABA letter.

[22] *See* FINRA letter. *See also* note 7, *supra*.

[23] *See* FINRA letter.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *See* Black and Gross letter.

[29] *Id.*

[30] *See* FINRA letter.

[31] *Id.*

[32] *Id.*

[33] Rules 12400 and 13400 state that an arbitrator is eligible to serve as chairperson if the arbitrator has completed chairperson training and: 1) has a law degree and is a member of a bar of at least one jurisdiction and has served as an arbitrator through award on at least two arbitrations in which hearings were held; or 2) has served as an arbitrator through award on at least three arbitrations in which hearings were held.

[34] *See* FINRA letter.

[35] *Id.*

[36] *See* PIABA letter.

[37] *See* Davis letter.

[38] *See* FINRA letter.

[39] *Id.*

decision.[40] Finally, FINRA noted that the proposed rule change also specifies that arbitrators would not be required to provide an explained decision in cases resolved under the simplified or default arbitration rules.[41]

FINRA concluded by stating that the proposal will increase investor confidence in the fairness of the arbitration process, and should be approved.[42]

IV. Discussion and Findings

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[43] In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[44] which requires among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change should address complaints that FINRA has received from non-prevailing parties regarding the absence of explanations in arbitration awards, by providing a framework through which parties could jointly require arbitrators to write an explained decision.

In general, the Commission believes that FINRA has responded to the comments adequately and appropriately, and has explained how the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.

The Commission's oversight of the securities arbitration process is directed at ensuring that it is fair and efficient. The Commission shares the concerns expressed by a commenter that the proposal may not increase investors' perceptions of fairness in circumstances in which an industry party does not agree to an investor's request for an explained decision. Nevertheless, the Commission believes that the even-handed approach of providing parties a means of jointly requesting a decision represents a reasonable compromise between the status quo, whereby the Codes offer parties no formal means of requesting an explained decision, and the original proposal, whereby claimants alone would have the right to request an explained decision. Further, the Commission believes that the procedures set forth in FINRA's proposed rule (including, procedures related to: Deadlines for submitting a request; designating the chairperson as the writer of explained decisions; compensation for writing explained decisions; substance of the explained decision; and eligibility of cases for explained decisions) will contribute to the efficiency of the securities arbitration process by setting forth clear guidelines for parties and arbitrators in instances where parties have jointly requested an explained decision.

At the same time, the Commission is concerned that it may be difficult for parties to mutually agree to request an explained decision, because the decision of whether to request an explained decision (or whether to refuse to request an explained decision) may ultimately be a strategic decision. In order to gauge the effectiveness of the proposal, the Commission has requested that FINRA gather statistics for a period of one year from the effective date of this proposal, on the number of joint requests for explained decisions made in arbitration. Further, the Commission has asked FINRA to report on any anecdotal evidence it receives during this one-year period that may shed light on how often parties are unable to agree to request an explained decision.

V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–FINRA–2008–051) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2775 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 17c(f).

[44] 15 U.S.C. 78o–3(b)(6).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59362; File No. SR–Phlx–2009–10]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Sponsored Access

February 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a sponsored access rule for a pilot period ending on July 29, 2009. The text of the proposed rule change is available on the Exchange's Website at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to attract additional business by adopting a sponsored access rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

similar to that of other exchanges. A Sponsored Participant is a non-member of the Exchange, such as an institutional investor, that gains access to the Exchange and trades under a Sponsoring Member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and a member organization. Specifically, the Exchange proposes to permit Sponsored Participants to be sponsored by Sponsoring Member Organizations, and thereby access the Exchange, subject to certain requirements. These requirements are intended to confirm that the Sponsored Participant is required to and had procedures in place to comply with Exchange rules, and that the Sponsoring Member Organization takes responsibility for the Sponsored Participant's activity on the Exchange.

First, the Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained an Access Agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in an addendum to the Access Agreement.

Second, there must be a Sponsored Participant Agreement between the Sponsoring Member Organization and the Sponsored Participant that contains the following sponsorship provisions, enumerated in full in Rule 1094(b)(ii):

(i) The orders of the Sponsored Participant are binding in all respects on the Sponsoring Member Organization;

(ii) The Sponsoring Member Organization is responsible for the actions of the Sponsored Participant;

(iii) In addition to the Sponsoring Member Organization being required to comply with the Exchange Certificate of Incorporation, By-laws, Rules and procedures of the Exchange, the Sponsored Participant shall do so as if such Sponsored Participant were an Exchange member organization;

(iv) The Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to the Exchange on behalf of the Sponsored Participant;

(v) The Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange;

(vi) The Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Exchange; [3]

(vii) The Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Exchange, including unauthorized entry of information into the Exchange, and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof;

(viii) The Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and Participants' use and access to the Exchange for compliance with the terms of this agreement;

(ix) The Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.

Third, the Sponsoring Member Organization must provide the Exchange with a Sponsored Participant Addendum to its Access Agreement acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by helping market participants seeking access to a marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become 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 permit the Exchange to immediately begin to accommodate requests from its members regarding sponsored access. The Commission notes that the proposal is substantially similar to the rules of other national securities exchanges.[10] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of such proposed rule change the

[3] If the Exchange determines that an authorized individual has caused a Member Organization to violate the Exchange's Rules, the Exchange could direct the Member Organization to suspend or withdraw the person's status as an authorized individual.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[9] *Id.*

[10] *See, e.g.*, International Securities Exchange, LLC Rule 706 and NYSE Arca, Inc. Rule 7.29.

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–10 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–Phlx–2009–10. 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–10 and should be submitted on or before March 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2858 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59321; File No. SR–NSCC–2008–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Rules To Add an Agreement From Fund Members That Submit Mutual Fund Profile Information

January 30, 2009.

I. Introduction

On September 30, 2008, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2008–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 29, 2008.[2] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The Mutual Fund Profile Service (''Profile'') is a central data source for comprehensive fund prospectus and operational information relating to mutual funds. The repository is a recognized industry standard for information critical to the distribution of mutual funds in the third-party market.

Profile is organized into three databases: (1) Security Issue Database (containing information such as Security ID number, security name, fee structure, investment objectives, breakpoint schedule data, and blue sky eligibility); (2) Participant Database (containing contact information, NSCC processing capabilities and restrictions or requirements); and (3) Distribution Database (containing projected or actual distributions, capital gains and dividend amounts and details, and commission information). NSCC fund members input data regarding their mutual funds into the Security Issue and Participant Profile databases. Profile is then accessed by the NSCC members that are mutual fund distributors.

NSCC has recently enhanced the Security Issue Database in Profile to include new data fields needed by distributors and to re-engineer the structure of the data hierarchy to be easier for fund members to populate their data. Some of the enhancements to the Profile database were initiated in response to a recommendation in the Report (''Report'') of The Joint NASD/Industry Task Force on Breakpoints (''Task Force'').[3] NSCC has also adopted measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile's capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now amending its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 59105 (December 16, 2008), 73 FR 79530.

[3] The Task Force was formed in 2003 by the National Association of Securities Dealers (''NASD'', now ''FINRA'') with the participation of major fund companies, broker-dealers, NSCC, the Securities Industries Association and the Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC's Profile database should be expanded to include breakpoint aggregation terms and rules for *all* fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[4] The rule change is consistent with the requirements of Section 17A of the Act, because it should promote the prompt and accurate clearance and settlement of securities transactions by modifying an NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by assisting in the overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2008–08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2854 Filed 2–10–09; 8:45 am]

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59320; File No. SR–NYSE–2008–112]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Discontinue Policy of Prohibiting Transfer Agents From Charging Fees for Issuing Stock Certificates

January 30, 2009.

I. Introduction

On October 30, 2008, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NYSE–2008–112 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 29, 2008.[2] The Commission received two comment letters.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As a part of the securities industry moving towards eliminating the use of physical certificates (*i.e.*, dematerialization) by encouraging investors to hold securities positions in book-entry form either in street name at a broker-dealer or through the Direct Registration System (''DRS''), the NYSE is discontinuing its long-standing, unwritten policy of prohibiting NYSE listed companies from charging for the issuance of stock certificates. DRS allows investors to have securities directly registered in book-entry form on the records of the issuer or its transfer agent without having a certificate issued.[4]

In its letter to the NYSE, the Securities Industry and Financial Markets Association (''SIFMA''), which is one of the leaders in the movement towards dematerialization, requested that the NYSE discontinue its prohibition of issuers or their transfer agents charging fees in connection with the issuance of securities certificates (''SIFMA Letter'').[5] SIFMA noted that almost 75% of physical certificates deposited by broker-dealers and bank custodians at The Depository Trust Company (''DTC''), a registered clearing agency that is the primary custodian of securities traded in the United States, were issued within the last six months. SIFMA stated its beliefs that these recent deposits indicate that DTC participants (*i.e.*, broker-dealers and banks) are providing physical certificates to their customers only to have the securities moved back into street name in a short period of time. In SIFMA's view, this activity results in unnecessary expense and in the risk that the certificates may be lost, destroyed, or stolen. SIFMA stated that it had recently conducted a survey that showed that more than 1.2 million certificates each year need to be replaced because of loss, destruction, or theft at an approximate cost to the transfer agents of $65 million.[6]

NYSE believes that securityholders derive no apparent benefit from continuing to hold their securities in certificated form rather than in uncertificated form in street name or through DRS and that the inability of the issuers or their transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE is discontinuing its prohibition of issuers or their transfer agents charging fees for the issuance of new certificates. Allowing transfer agents to charge for the issuance of certificates should not only shift the cost of the issuance of certificates from the issuers and transfer agents to the requesting securityholders but should also have the added effect of encouraging more securityholders to hold their securities in street name or through DRS, which should further the dematerialization movement. NYSE listed companies that want their investors to continue to have access to the free issuance of new certificates will be able to ensure the continuation of such practice through their contractual arrangements with their transfer agents.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 59106 (December 16, 2008), 73 FR 79531.

[3] Letters from Charles V. Rossi, President, The Securities Transfer Association, Inc. (January 16, 2009); and Martin J. McHale, Jr., President, U.S. Equity Services, Computershare (January 20, 2009).

[4] DRS allows securities positions to be electronically transferred to a broker-dealer in order to effect a transaction without the risk and delay associated with the use of paper certificates. Since March 31, 2008, Section 501.00 of NYSE's Listed Company Manual has required that all securities listed on the NYSE must be eligible for participation in DRS. Approximately 2,428 NYSE listed securities currently participate in DRS. Securities Exchange Act Release No. 58398 (August 20, 2008), 73 FR 51546 (September 3, 2008) [File No. SR-NYSE–2008–069).

[5] Letter to Stephen Walsh, Vice President, NYSE Euronext, from Lawrence Morillo, SIFMA Operations Legal & Regulatory Sub-Committee Chair. (August 26, 2008).

[6] ''Securities Industry Immobilization & Dematerialization Implementation Guide—The Phase-Out of the Stock Certificate'' (SIFMA, 2008).

NYSE believes that the rule change will help make the securities markets more safe and efficient by encouraging the dematerialization of securities and by correctly placing the cost of the use of certificates on those investors requesting certificates. NYSE also believes that the rule change is consistent with the protection of investors and the public interest because holding a securities position in street name or through DRS provides investors with the ability to hold their securities in a safe and cost-effective manner without incurring the costs associated with the issuance and processing of securities certificates.

III. Comment Letters

The Commission received two comment letters,[7] both in support of the proposed rule change. Computershare, a registered transfer agent, and The Securities Transfer Association, an industry association representing transfer agents, stated that the rule change was an important step toward the goal of dematerialization by decreasing the use of certificates in the marketplace and encouraging investors to hold shares in DRS, thereby reducing the risk and unnecessary expense for both issuers and shareholders of issuing and holding certificates.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[8] The Commission's approval of the rule change should remove impediments to and perfects the mechanism of a free and open market and a national market system in that it encourages the dematerialization of securities, which should improve the process of transferring securities in the public markets. The rule change is also consistent with the protection of investors and the public interest because investors can avoid the fees for the issuance of certificates by holding their securities in street name or through DRS which are safer and more cost effective alternatives to holding securities in certificated form.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NYSE's obligation under Section 6 of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6 of the Act and the rules and regulations thereunder.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2008–112) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2853 Filed 2–10–09; 8:45 am]

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[7] Supra note 3.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59353; File No. SR–NYSEALTR–2008–12]

Self-Regulatory Organizations; NYSE Alternext US LLC; Order Approving Proposed Rule Change To Establish the Risk Management Gateway Service

February 3, 2009.

I. Introduction

On December 12, 2008, NYSE Alternext US LLC (''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Risk Management Gateway (''RMG'') service. The proposed rule change was published for comment in the **Federal Register** on December 31, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59144 (December 22, 2008), 73 FR 80502.

II. Description of the Proposed Rule Change

The Exchange proposes to offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE Alternext members and member organizations pursuant to voluntary, contractual arrangements.[4] NYSE Transact Tools, Inc., a division of the NYSE Euronext Advanced Trading Solutions Group (''NYXATS''), owns RMG.[5] NYSE Alternext Equities Rule 123B.30 permits NYSE Alternext members and member organizations (a ''Sponsoring Member Organization'') to provide sponsored access to non-member firms or customers (''Sponsored Participants'') to Exchange trading systems. Pursuant to this proposal, the Exchange would offer RMG to facilitate a Sponsoring Member Organization's ability to monitor and supervise the trading activity of its Sponsored Participants. RMG is a risk filter that verifies orders entered by Sponsored Participants prior to the receipt of the order by the Exchange's trading systems. Specifically, RMG verifies whether a Sponsored Participant's order complies with order criteria established by the Sponsoring Member Organization for the Sponsored Participant, including, amongst other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users. If the order is consistent with the parameters set by the Sponsoring Member Organization, after RMG's verification, the order would be permitted to continue along its path to the Exchange's trading systems. However, if the order did not meet the specified parameters, RMG would return the order to the Sponsored Participant.

RMG would only interact with a Sponsored Participant's order prior to the order's receipt by the Exchange's trading system. In addition, RMG would only return an order to the Sponsored Participant if the order did not meet the criteria set by the Sponsoring Member Organization. RMG would not provide order execution or trade reporting capabilities, but RMG would maintain records of all messages related to

[4] A similar service has been approved for NYSE. *See* Securities Exchange Act Release No. 59354 (February 3, 2009) (SR–NYSE–2008–101).

[5] NYXATS will host the RMG software on its infrastructure. After passing through the RMG software, each order will enter the NYSE Common Customer Gateway for connectivity to the Exchange's matching engine. According to the Exchange, in the future, NYXATS may integrate RMG into the NYSE CCG for more direct access to the Exchange's matching engine.

Sponsored Participants' transactions and provide the applicable Sponsoring Member Organization copies of those records.

The Sponsoring Member Organization, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of the RMG by a Member Organization does not automatically constitute compliance with Exchange rules.

The Exchange proposes to make RMG available to its members and member organizations pursuant to contractual arrangements. The Exchange states that it believes that RMG will offer its members and member organizations another option in the efficient risk management of its Sponsored Participant's access to the NYSE Alternext Trading Systems.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to establish its RMG service is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that RMG should be a useful risk management tool for NYSE Alternext member firms that provide sponsored access to the Exchange.

For the foregoing reasons, the Commission believes that the proposal to establish the RMG service is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSEALTR–2008–12) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2852 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59360; File No. SR–NYSEALTR–2009–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Amending NYSE Alternext Equities Rules 116 and 123C To Create a Single Closing Print To Be Reported to the Consolidated Tape for Each Security

February 4, 2009.

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 2, 2009, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Alternext filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it 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 NYSE Alternext Equities Rules 116 (''Stop'' Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to create a single closing print to be reported to the Consolidated Tape for each security.

The text of the proposed rule change is available at *http://www.nyse.com*, the Exchange, and the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend NYSE Alternext Equities Rules 116 and 123C to create a single closing print to be reported to the Consolidated Tape for each security.

Background

As described more fully in a related rule filing,[6] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[7] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the ''86 Trinity Trading Systems''), to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[8]

[6] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

In order to implement the Equities Relocation, the Exchange adopted Rules 1–1004 of the New York Stock Exchange LLC as the NYSE Alternext Equities Rules to govern the equities trading on the NYSE Alternext Trading Systems.

Current Reporting of Closing Transactions

NYSE Alternext Equities Rules 116.40 and 123C prescribe, *inter alia,* the procedures for the execution of the entry of market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders [9] and the determination of the closing print(s) to be reported to the Consolidated Tape for each security at the close of trading.

Pursuant to NYSE Alternext Equities Rule 123C market participants may enter an MOC order to have that order executed as part of the closing transaction at the price of the close.[10] Similar to a market order, an MOC order is to be executed in its entirety at the closing price; however, if the order is not executed as a result of a trading halt or because of its terms (*e.g.*, buy minus or sell plus), the MOC order is cancelled.[11]

Market participants that seek to have their orders executed on the close but are sensitive to price may, pursuant to NYSE Alternext Equities Rule 123C, enter LOC orders that will be eligible for execution in the closing transaction, provided that the closing price is at or within the limit specified.[12] An LOC order is not guaranteed an execution in the closing transaction; rather, only an LOC order with a limit price that is better [13] than the closing price in the subject security is guaranteed an execution.[14] An LOC order limited at the closing price is sequenced with other LOC orders on the NYSE Alternext Equities Display Book® [15] (''Display Book'') in time priority and will be available for execution after all other orders on the Display Book at the closing price are executed regardless of when such other orders are received.[16]

Pursuant to NYSE Alternext Equities Rule 123C(5), at 3:40 p.m. if a security has a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell of 50,000 shares or more the assigned DMM is required to send a message from Display Book that is published to the Consolidated Tape informing the investing public of the disparity (''Mandatory Indication''). The Mandatory Indication includes the symbol, the amount and the side of the imbalance. In addition, to the Mandatory Indication, a DMM may, with Floor Official approval, disseminate an imbalance publication that is for a disparity of less than 50,000 shares when the imbalance in the security is significant in relation to the average daily trading volume in the security. At 3:50 p.m. the DMM is required to provide an update of the previous imbalance publications.

At the close of trading, any closing imbalance of MOC and marketable LOC orders are calculated by netting (*i.e.*, pairing off) the aggregate amount of MOC and marketable LOC buy orders against the aggregate amount of MOC and marketable LOC sell orders.[17] Exchange systems calculate the number of MOC and marketable LOC orders on each side of the market and pair them off. Where there is an imbalance (*i.e.* more orders to buy than sell or vice versa), the shares constituting the imbalance are executed against the offer (in case of a buy imbalance) or the bid (in the case of a sell imbalance).[18] This transaction is reflected on the first closing print from the NYSE to the Consolidated Tape for the particular security.[19] The DMM then pairs off the remaining MOC and marketable LOC buy and sell orders against each other at the price at which the imbalanced shares were executed.[20] This ''pair off'' transaction is reported as a second closing print from the NYSE to the Consolidated Tape as ''stopped stock.'' [21]

If there is no imbalance, the aggregate buy and sell MOC and marketable LOC orders are paired off at the price of the last sale of the subject security on the Exchange prior to the close of trading in the security.[22] This transaction is reported to the Consolidated Tape in a single closing print as ''stopped stock.'' [23]

Proposed Single Closing Print

The closing transaction on the Exchange continues to be a manual auction in order to facilitate greater price discovery and allow for the maximum interaction between market participants. Currently, increased volatility in the market has given rise to the need to simplify procedures. In order to continue to provide timely closing of securities, the Exchange believes that it is necessary to reduce the manual processing required of the DMM to promote an even more efficient close. As such, the Exchange seeks to create a single closing print to be reported to the Consolidated Tape for each security. The Exchange believes that this will work to optimize the efficient operation of the closing process.

The Exchange therefore proposes to amend NYSE Alternext Equities Rules 116 and 123C(3) to provide for a single closing print to be reported to the Consolidated Tape system for each listed security. Currently, the DMM is required to manually enter the imbalance and the paired prints to Exchange systems for reporting to the Consolidated Tape. Requiring two prints impedes DMMs' efficiency in reporting the closing transaction.

Multiple closing prints were used to provide information about the share imbalances that impacted the closing price of a security on the Exchange. NYSE Alternext Equities Rule 123C allows Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the close of trading on the Exchange (''Order Imbalance Information''). Order Imbalance Information is supplemental information disseminated by the Exchange prior to a closing transaction.[24] Specifically, Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m.; thereafter, it is disseminated every five seconds between 3:50 p.m. and 4 p.m. On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m., the dissemination of Order Imbalance Information commences 20 minutes

[9] In the NYSE Alternext Equities Rules and for the purposes of this discussion, the terms ''market-on-close'' and ''limit-on-close'' are used interchangeably with ''market-at-the-close'' and ''limit-at-the-close''.

[10] *See* NYSE Alternext Equities Rule 123C(1).

[11] *See Id.*

[12] *See* NYSE Alternext Equities Rule 123C(2).

[13] As used herein, better than the closing price means an order that is lower than the bid in the case of an order to sell or higher than the offer in the case of an order to buy.

[14] It should be noted that orders are cancelled if there is a trading halt in the security that is not lifted prior to the close of trading.

[15] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[16] *See* NYSE Alternext Equities Rules Rule [sic] 123C(2).

[17] *See* NYSE Alternext Equities Rules 116.40 and 123C(3).

[18] *See* NYSE Alternext Equities Rules 116.40(B) and 123C(3)(A).

[19] *See Id.*

[20] *See* NYSE Alternext Equities Rule 123C(3)(A).

[21] *See* NYSE Alternext Equities Rules 116.40(C) and 123C(3)(A).

[22] *See* NYSE Alternext Equities Rules 116.40(C) and 123C(3)(B).

[23] *See Id.*

[24] *See* NYSE Alternext Equities Rule 123C(6).

before the scheduled closing time. On those days, Order Imbalance Information is disseminated every fifteen seconds for approximately 10 minutes; thereafter, the Order Imbalance Information is disseminated ever [sic] five seconds until the scheduled closing time.

The Exchange believes that the Order Imbalance Information achieves the goal of providing real-time detail and transparency for market participants about the factors that impact the closing price of a security. The Exchange further notes that the current imbalance publications pursuant to NYSE Alternext Equities Rule 123C(5) will continue to be disseminated in accordance with the provisions of the rule. As such, the Exchange believes that there no longer exists a need for the dissemination of two separate prints at the close.

The Exchange therefore proposes that the imbalance, if any, paired off closing transactions and stop orders elected for execution on the close be reported to the Consolidated Tape System as a single transaction and print. The Exchange proposes to amend the text of NYSE Alternext Equities Rule 116.40(C) to remove language that states that ''pair off'' transactions should be printed to the Consolidated Tape as stopped stock. Similarly, the Exchange proposes to amend NYSE Alternext Equities Rule 123C(3) (Closing Prints) to state that the imbalance and the pair off amounts shall be printed to the Consolidated Tape as a single transaction.

Pursuant to the above proposed changes, a single print close in a security would occur as described in the example below:

The DMM for stock XYZ has determined that the closing price in the stock will be $30.25. The last sale price on the Exchange was $30.00. The DMM has 6,000,000 shares of MOC and marketable LOC buy orders up to a price of $30.25. On the sell side, there are 5,000,000 MOC and marketable LOC sell orders down to a price of $30.24. The DMM pairs 5,000,000 shares of MOC and marketable LOC buy orders against the 5,000,000 shares of MOC and marketable LOC sell orders at a price of $30.25, leaving an imbalance of 1,000,000 shares on the buy side. On the Display Book, the DMM has 700,000 shares of limit sell orders at various prices marketable up to a price of $30.25, and there is also Crowd interest of 300,000 shares at that price. The DMM will use the 700,000 shares of limit sell orders on the Display Book and 300,000 shares of Crowd interest to offset the remaining 1,000,000 shares of MOC and marketable buy LOC imbalance.

In the above example, the DMM would continue to arrange the closing transaction as set forth in NYSE Alternext Equities Rules 123C(3) and 116.40; however, rather than reporting two separate closing prints to the Consolidated Tape, a single closing print reflecting the execution of 6,000,000 shares at $30.25 would be reported. The 6,000,000 share volume in the single print close includes: (1) the 1,000,000 share buy order imbalance; and (2) the 5,000,000 shares of MOC and marketable LOC buy and sell orders that were paired off.

The Exchange believes that the consolidation of the separate closing transactions and prints will reduce the amount of manual information to be reported by the DMM thus increasing the speed and efficiency of the closing process ultimately improving the quality of the Exchange market with timelier reporting of closing transactions.

Proposed Technical Amendment to NYSE Alternext Equities Rule 123C(3)

Percentage orders are not valid orders on the Exchange; however, there remains an inadvertent reference to this legacy order type in NYSE Alternext Equities Rule 123C(3). The Exchange therefore seeks to correct this oversight by deleting that reference to percentage order from the rule through this filing given that percentage orders are not valid order types.

Proposed Changes to NYSE Alternext Rules

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE. These changes are described in SR-NYSE–2009–10.[25]

Operative Date

The Exchange proposes that the amendments herein will be operative as of February 6, 2009.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] 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 the proposed rule change will facilitate the timely and efficient closing of securities on the Exchange and thus ultimately serve 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[30] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[31] and has proposed to make the rule change operative as of February 6, 2009.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will enable the Exchange to immediately implement a more efficient closing process, thereby providing for timelier reporting of the

[25] *See* SR–NYSE–2009–10 (filed January 30, 2009).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6)(iii).

closing transaction. Additionally, the Commission notes that the Exchange will continue to publish the Mandatory Indication when there is a significant imbalance before the close, as required under Rule 123C(5). Accordingly, the Commission designates the proposed rule change as operative as of February 6, 2009.[32]

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.[33]

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–NYSEALTR–2009–06 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–NYSEALTR–2009–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–NYSEALTR–2009–06 and should be submitted on or before March 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2856 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[32] 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).

[33] 15 U.S.C. 78s(b)(3)(C).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59349; File No. SR–NYSEArca–2009–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 5.4 To Eliminate the $3 Market Price Per Share Requirement

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Arca has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5.4 to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security and eliminate the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3. Changes to the rule text are shown in the attached Exhibit 5.[4] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Rule 5.4. In addition, the rule filing would further amend Rule 5.4 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3.

The Exchange believes that the $3 market price per share requirement is no longer necessary or appropriate, and states that only those underlying securities meeting the remaining maintenance listing criteria set forth in Rule 5.4 will be eligible for continued listing and the listing of additional option series. The Exchange believes

[4] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Exchange, the Commission's Public Reference Room, and at *http://www.nyse.com.*

that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment, the Exchange is currently unable to list new series on underlying securities trading below $3. If there is market demand for series while the underlying is below $3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with new options series.

As of January 2, 2009, the Exchange had 209 underlying issues that had closed below $3 per share, and an additional 176 that had closed between $3 and $5 per share, out of a total of 2170 underlying classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, as it provides for the continued listing of options overlying securities that meet all requirements except for share price. By continuing the listing, investors will be able to continue managing risk in these securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[9] and does not raise any new substantive issues. The Exchange requests the waiver of the 30-day operative delay so that the proposed rule change may become effective and operative on or near the date that the CBOE proposal is operative. For these reasons, the Commission believes that waiving the 30-day operative delay [10] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–07 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2009–07 and should be submitted on or before March 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2772 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] NYSE Arca's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') recently approved by the Commission. *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (SR–CBOE–2008–127).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59364; File No. SR–NYSEArca–2009–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Establish a Technical Original Listing Fee Specific to Derivative Securities Products and Structured Products

February 5, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 23, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes to adopt a technical original listing fee applicable specifically to Derivative Securities Products (as defined below) and Structured Products (as defined below). The filing also removes from the NYSE Arca Schedule of Fees and Charges a reference to a fee waiver that was applicable only in 2007 and is therefore no longer relevant. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a technical original listing fee applicable specifically to Derivative Securities Products and Structured Products.

For the purposes of this proposed fee, the term ''Derivative Securities Products'' shall include securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); and 8.600 (Managed Fund Shares). The term ''Structured Products'' shall include securities listed under Rule 5.2(j)(1) (Other Securities); 5.2(j)(2) (Equity Linked Notes), Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities); Rule 5.2(j)(7) (Trust Certificates); Rule 8.3 (Currency and Index Warrants); and Rule 8.400 (Paired Trust Shares).

Derivative Securities Products and Structured Products are currently subject to the Exchange's existing technical original listing fee of $5,000, which is applicable to all listed securities (other than closed-end funds, for which the Exchange previously adopted a separate technical original listing fee of $15,000).[4] For purposes of the existing technical original listing fee and the proposed separate technical original listing fee for Derivative Securities Products and Structured Products, a technical original listing would occur as a result of a change in state of incorporation, reincorporation under the laws of same state, reverse stock split, recapitalization, creation of a holding company or new company by operation of law or through an exchange offer, or similar events affecting the nature of a listed security. The fee applies if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their position in the issuer's capital structure or rights.

The Exchange believes that the existing $5,000 fee is not suitable for Derivative Securities Products and Structured Products, as it is very high in comparison to the initial and continued listing fees for those securities. Issuers of Derivative Securities Products pay a flat initial listing fee of $5,000 and issuers of Structured Products pay a minimum of $5,000 in initial listing fees and a maximum of $45,000, depending on how many securities are issued. In comparison, the minimum initial listing fee for operating company common stock is $100,000 and the maximum is $150,000. The annual fee for Derivative Securities Products ranges from $2,000 to $25,000 and for Structured Products from $10,000 to $55,000. Generally, in comparison, annual fees for common stock of operating companies range from $30,000 to $85,000. Generally, for any given number of securities issued and outstanding, the initial and annual fees payable for a listed common stock far exceed the amount payable for a comparable number of securities of a Derivative Securities Product or Structured Product. The Exchange believes that the existing technical original listing fee is disproportionate in relation to the other costs of listing Derivative Securities Products and Structured Products on the Exchange and that a $2,500 fee is more consistent with the pricing expectations of issuers of these categories of securities. The $2,500 fee may include multiple issues of securities from the same issuer. The Exchange believes that charging a single application fee for multiple securities covered on a single application is appropriate, as there is very little additional work required by Exchange staff to process multiple technical original listings of the same issuer in comparison to the work required in connection with the processing of an application for a single security. The Exchange recognizes that it does not take this approach to multiple classes of equity securities of an operating company, but believes that the distinction is appropriate for two reasons: (i) Given the much lower listing fees associated with the listing of Derivative Securities Products and Structured Products than with operating company equity listings, even the $2,500 technical original listing fee would be proportionately much greater in comparison to the initial and annual fees paid by issuers of Derivative

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 55917 (June 15, 2007), 72 FR 34325 (June 21, 2007) (SR–NYSEArca–2007–22).

Securities Products and Structured Products than would be the case for issuers of operating company equity securities, and (ii) issuers of Derivative Securities Products and Structured Products are much more likely than issuers of operating company securities to effectuate reverse stock splits (one of the most common events giving rise to a technical original listing) in multiple classes of securities at the same time.[5]

The filing also removes from the NYSE Arca Schedule of Fees and Charges a reference to a fee waiver that was applicable only in 2007 and is therefore no longer relevant. Issuers are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. However, for those issuers dually listed on the Exchange and another securities exchange on January 1, 2007 who gave notice by June 30, 2007 to the Exchange of their intention to voluntarily withdraw from listing on the Exchange (and in fact withdraw during 2007), the 2007 annual listing fees were waived (and not subject to prorating). This filing removes text from Footnote 8 to the NYSE Arca Schedule of Fees and Charges which described this waiver, as that text is of no further relevance.

The NYSE Arca Schedule of Fees and Charges can be found on the Exchange's Web site at *http://www.nyse.com/pdfs/NYSEArca_Listing_Fees.pdf*.

2. Statutory Basis

The bases under the Exchange Act for this proposed rule change are: (i) The requirement under Section 6(b)(4)[6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and (ii) the requirement under Section 6(b)(5)[7] of the Exchange Act that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between issuers. The Exchange believes that the proposed technical original listing fee specific to Derivative Securities Products and Structured Products constitutes an equitable allocation of fees, as it will be applied consistently to all listed securities in those classes and is set at a level that is consistent with the Exchange's overall approach to pricing for Derivative Securities Products and Structured Products.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca'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–NYSEArca–2009–03 and should be submitted on or before March 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2855 Filed 2–10–09; 8:45 am]

BILLING CODE 8011–01–P

[5] The Exchange notes that it has listed a significant number of Derivative Securities Products and Structured Products that are leveraged, i.e., whose value changes based on a positive or negative multiple of the performance of an index. The leveraged nature of these products makes it much more likely that they will have an unusually low trading price, which frequently leads an issuer to effectuate a reverse stock split to reprice the security at a more typical trading price. The Exchange has not had this experience yet with leveraged products, but notes that leveraged products have been listed for the first time over the last two years.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(4)(sic). The Commission notes that the correct citation should reflect 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6522]

30-Day Notice of Proposed Information Collection: Form DS–1622 and DS–1843, Medical History and Examination for Foreign Service, OMB 1405–0068

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information

collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Medical History and Examination for Foreign Service.
- *OMB Control Number:* 1405–0068.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Office of Medical Support, M/MED/C/MC.
- *Form Number:* DS–1622 and DS–1843.
- *Respondents:* Foreign Service Officers, State Department Employees, Other. Government Employees and Family Members.
- *Estimated Number of Respondents:* 7,234 per year.
- *Estimated Number of Responses:* 7,234 per year.
- *Average Hours per Response:* 1.0 hours per response.
- *Total Estimated Burden:* 7,234 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATE(S): Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 11, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Anitra Collins, Room L213, 2401 E St., NW., Washington, DC 20052–0101, who may be reached on 202–663–1754 or at *collinsas@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Forms DS–1622 and DS–1843 is designed to collect medical information to provide medical providers with current and adequate information to base decisions on medical suitability for a federal employee and family members for assignment abroad. Both forms will allow medical personnel to verify that there are sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members within the State Department medical program.

Methodology:

The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: January 14, 2009.

Sharon Ludan,

Executive Director, Office of Medical Services, Department of State.

[FR Doc. E9–2931 Filed 2–10–09; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 6524]

Culturally Significant Objects Imported for Exhibition Determinations: ''Pictures Generation, 1974–1984''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Pictures Generation, 1974–1984,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about April 21, 2009 until on or about August 2, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 30, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–2928 Filed 2–10–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6523]

Correction of Notice Advising of the Imposition of Sanctions Against Three North Korean Entities

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: The Department of State published a document in the **Federal Register** of February 2, 2009, concerning the imposition of Category II Missile Sanctions Against Three North Korean Entities. The name of one of the North Korean entities was misspelled.

FOR FURTHER INFORMATION CONTACT: Pam Durham, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–4931). On import ban issues, Rochelle Stern, Director Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury (202–622–2500). On U.S. Government procurement ban issues, Kim Triplett, Office of the Procurement Executive, Department of State (703–875–4079).

Correction

In the **Federal Register** of February 2, 2009, in Public Notice 6503 on page 5881, in the third column, correct the name of the second listed North Korean entity to read:

Moksong Trading Corporation (North Korea) and its sub-units and successors.

Dated: February 4, 2009.

C.S. Eliot Kang,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. E9–2926 Filed 2–10–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 31, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0024.

Date Filed: January 27, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 17, 2009.

Description: Application of Jazz Air LP d/b/a Air Canada Jazz, d/b/a Jazz and d/b/a Jazz Air (''Jazz'') requesting a foreign air carrier permit and exemption authority that would enable Jazz to take advantage of the expanded air service opportunities made available to both U.S. and Canadian carriers pursuant to the terms of the U.S.-Canada Open Skies Agreement.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E9–2889 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 31, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0027.

Date Filed: January 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1262). Minutes: TC3 Bangkok, 10–15 November 2008, (Memo 1269). Intended effective date: 1 April 2009.

Docket Number: DOT–OST–2009–0028.

Date Filed: January 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea–South East Asia, between Korea (Rep. of) and Guam, Northern Mariana Islands, Resolutions & Specified Fares Tables (Memo 1256). Minutes: TC3 Bangkok, 10–15 November 2008. (Memo 1269). Intended effective date: 1 April 2009.

Docket Number: DOT–OST–2009–0029.

Date Filed: January 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands (Memo 1255). Technical Correction: TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands (Memo 1265). Minutes: TC3 Bangkok, 10–15 November 2008, (Memo 1269). Intended effective date: 1 April 2009.

Docket Number: DOT–OST–2009–0030.

Date Filed: January 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Areawide Resolutions. (Memo 1254). Technical Correction: TC3 Areawide Resolutions (Memo 1264). Minutes: TC3 Bangkok, 10–15 November 2008 (Memo 1269). Intended effective date: 1 April 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–2891 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Final Environmental Assessment for the Proposed Airport Development at the Sawyer County Airport in Hayward, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Draft Final Environmental Assessment for the Proposed Airport Development at the Sawyer County Airport in Hayward, Wisconsin.

SUMMARY: The Federal Aviation Administration (FAA), in conjunction with the Wisconsin Department of Transportation Bureau of Aviation (WisDOT BOA), have prepared a joint Federal and State Draft Final Environmental Assessment (DFEA) for the Proposed Airport Development at the Sawyer County Airport in Hayward, Wisconsin. The FAA and WisDOT BOA are making available the DFEA for the following proposed airport improvement projects: installation of an instrument landing system (ILS) for Runway 20 with medium approach lighting system with runway alignment indicator lights; construction of a parallel taxiway/ramp expansion for Runway 2/20; land acquisition; removal of airspace obstructions, including removal/relocation of a town road; and relocation of precision approach path indicator, localizer, and distance measuring equipment at Runway 20.

The proposed airport improvement projects include both state block program actions and FAA actions. Actions for the proposed airport improvement project would be divided between FAA and WisDOT BOA. Agency approvals are required to proceed. Proposed FAA actions include: provide Federal environmental approval to establish eligibility to participate in Federal funding for eligible projects not included in the state block grant program which are assessed in the EA; issue an environmental finding for FAA actions; provide ILS equipment, assist in the design of the proposed ILS; perform the flight check, certification, and operation of the proposed ILS; and provide long-term maintenance of the proposed ILS.

Proposed WisDOT BOA actions for the airport improvement projects include: issue an environmental finding for WisDOT BOA's actions; determine eligibility of Airport Improvement Program funds for the proposed ILS project; approve the necessary funding for the proposed ILS project; assist in design of the proposed ILS; purchase land for the proposed ILS; install the proposed ILS; construct necessary airport facilities to support proposed ILS and airport operations; develop, implement, and monitor required mitigation for unavoidable impacts due to the proposed ILS project.

The DFEA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Order 1050.1E, ''Policies and Procedures for Considering Environmental Impacts,''

and FAA Order 5050.4B, ''NEPA Implementing Instructions for Airport Actions.'' The proposed action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation, FAA.

The DFEA will be available for public review for 30 days at the following locations:

Sherman and Ruth Weise Community Library, 10788 Hwy 27/77, Hayward, WI;

Sawyer County Airport Manager's Office, 10930 N. Airport Road, Hayward, WI;

Sawyer County Clerk's Office, 10610 Main Street, Hayward, WI;

WisDOT, 4802 Sheboygan Avenue, Room 701, Madison, WI.

ADDRESSES: Written comments are encouraged from persons or interested parties. Written comments concerning the DFEA will be accepted until 5 p.m. CST, Monday, March 16, 2009. Written comments may be sent to: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. *Telephone number:* 847–294–7494. *E-mail: virginia.marcks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Sawyer County Airport currently has non-precision instrument approach capabilities. During inclement weather with low visibility and low ceilings, aircraft pilots may not be able to land because they are unable to see the landing runway as they approach to land. Instrument flight rules (IFR) regulate aircraft operations during inclement weather under low visibility and cloud ceilings. Under IFR conditions, aircraft must use an instrument approach to initiate the landing process. The proposed ILS would provide instrumentation that would allow landings under IFR conditions.

Medical transport pilots from several companies use the Sawyer County Airport on a regular basis. Medical flights are not scheduled events; they occur whenever a medical emergency arises, good weather or bad. When medical transports cannot land, it is more than an inconvenience; it's typically a life-threatening situation. An ILS at the Sawyer County Airport would serve the purpose of increasing the probability that those medical transports could land whenever they were needed.

Issued in Des Plaines, Illinois, February 6, 2009.

Joe Dillon,

Acting Manager, Infrastructure Engineering Center, Chicago, AJW–C14D, Central Service Area.

[FR Doc. E9–3005 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–08]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 3, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1260 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Laverne Brunache (202) 267–3133, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 5, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2008–1260.

Petitioner: Aeronautical Repair Station Association.

Section of 14 CFR Affected: Part 121 appendices I and J.

Description of Relief Sought: To permit LONG–LOK Fasteners Corporation, a client of ARSA, to be exempted from drug and alcohol testing requirements while performing maintenance or preventive maintenance on a part 121 or part 135 aircraft.

[FR Doc. E9–2878 Filed 2–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from BST Associates (WB616–2—2/15/08) for access to certain data from the Board's 2005–2007 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the

Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–2771 Filed 2–10–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 5, 2009.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for emergency review, and it has been approved under the Paperwork Reduction Act of 1995, Public Law 104–13. To allow interested persons to comment on this information collection, the Department is publishing this notice and plans to submit a request for a three-year extension of OMB's approval. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the Agency reviewer listed below and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 13, 2009 to be assured of consideration.

Office of the Special Inspector General, Troubled Asset Relief Program

OMB Number: 1505–0212.

Type of Review: New Collection.

Title: Use of TARP Funds and Compliance with Executive Compensation Issues.

Purpose of the Information Collection: The Emergency Economic Stabilization Act of 2008, which established the TARP, also created SIGTARP. SIGTARP is responsible for coordinating and conducting audits and investigations of any program established by the Secretary of the Treasury under the act. One of SIGTARP's primary areas of focus is ensuring, to the fullest extent possible, transparency in the operation of TARP. Increasingly, members of the Congress, the press, and the public have expressed frustration with the opaque nature of TARP operations, and they have raised questions about (1) the use funding provided by the Federal government under the various TARP programs; and (2) efforts to restrain excessive executive compensation. The questionnaires that are the subject of this notice are limited in scope to these questions, and are intended to accommodate a September 2009 report to Congress.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form:* Use of TARP Funds and Compliance with Executive Compensation Issues.

(3) *Type of request:* New.

(4) *Frequency of use:* Single data gathering scheduled for 2009.

(5) *Description of respondents:* TARP recipients.

(6) *Estimated number of respondents:* Based upon current program participants, the questionnaires initially will be sent to 350 respondents.

(7) *Estimated total number of hours for all respondents combined to complete the form:* 1,750.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by SIGTARP, and not disclosed in a manner that would reveal the individual operations of a TARP recipient.

Additional Information or Comment: Requests for additional information or copies of the questionnaire and instructions should be directed to Barry W. Holman, Deputy Inspector General for Audit, at (202) 622–4633. Comments about the proposals should be directed to Mr. Holman at Office of the Special Inspector General for Troubled Asset Relief Program, Department of the Treasury, 1500 Pennsylvania Ave., Washington, DC 20220. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–2817 Filed 2–10–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of One Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of one entity identified in this notice, pursuant to Executive Order 13224, is effective on *February 4, 2009.*

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose

a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 4, 2009 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

FREE LIFE PARTY OF KURDISTAN (a.k.a. KURDISTAN FREE LIFE PARTY; a.k.a. PARTIYA JIYANA AZAD A KURDISTANE; a.k.a. PARTY OF FREE LIFE OF KURDISTAN; a.k.a. PEJAK; a.k.a. PEZHAK; a.k.a. PJAK), Qandil Mountain, Irbil Governorate, Iraq; Razgah, Iran [SDGT]

Dated: *February 4, 2009.*

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–2819 Filed 2–10–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8508

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8508, Request for Waiver From Filing Information Returns Electronically (Forms W–2, W–2G, 1042–S, 1098 Series, 1099 Series, 5498 Series, and 8027).

DATES: Written comments should be received on or before April 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688 at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver From Filing Information Returns Electronically (Forms W–2, W–2G, 1042–S, 1098 Series, 1099 Series, 5498 Series, and 8027).

OMB Number: 1545–0957.

Form Number: Form 8508.

Abstract: Certain filers of information returns are required by law to file electronically. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms, Federal Government, State, Local or Tribal Government, and Not-for-Profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–2832 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–28–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, EE–28–78 (TD 7845), Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans (§§ 301.6104(a)–1, 301.6104(a)–5, 301.6104(a)–6, 301.6104(b)–1 and 301.6104(c)–1.

DATES: Written comments should be received on or before April 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78.

Abstract: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. The Internal Revenue Service needs the required information to comply with requests for public inspection.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 42,370.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 8,538.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–2833 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5452, Corporate Report of Nondividend Distributions.

DATES: Written comments should be received on or before April 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Corporate Report of Nondividend Distributions.

OMB Number: 1545–0205.

Form Number: 5452.

Abstract: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 604(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Current Actions: Due to an error in our previous burden computation, the burden hours increased to 57,885 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,700.

Estimated Number of Respondents: 34 hours, 3 minutes.

Estimated Total Annual Burden Hours: 57,885.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–2834 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 11, 2009

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Gain Recognition Agreements With Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9446]

RIN 1545–BG09

Gain Recognition Agreements With Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 367(a) of the Internal Revenue Code (Code) concerning gain recognition agreements filed by United States persons with respect to transfers of stock or securities to foreign corporations. The regulations finalize temporary regulations published on February 5, 2007 (TD 9311). The regulations primarily affect United States persons that transfer (or have transferred) stock or securities to foreign corporations and that will enter (or have entered) into a gain recognition agreement with respect to such a transfer.

DATES: *Effective Date:* These regulations are effective February 11, 2009.

Applicability Dates: For dates of applicability, see §§ 1.367(a)–3(g) and 1.367(a)–8(r).

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147144–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147144–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–147144–06).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2056.

The collections of information in these final regulations are in § 1.367(a)–8(d), (g), (k), and (o). Responses to the collections of information are required to avoid recognizing gain under an existing gain recognition agreement and to facilitate electronic filing. The regulations also require the amount of any gain recognized under a gain recognition agreement and applicable interest due with respect to any additional tax due with respect to such gain to be reflected on a schedule included with the electronically-filed return of the taxpayer.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection of information displays a valid control number.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On February 5, 2007, the IRS and Treasury Department issued temporary and proposed regulations under section 367(a) concerning the terms and conditions for a gain recognition agreement (GRA) filed by a United States person (the U.S. transferor) in connection with a transfer of stock or securities to a foreign corporation (transferee foreign corporation) and the impact of certain transactions on an existing GRA (the 2007 regulations). 72 FR 5184 (T.D. 9311) (2007–10 IRB 635). No public hearing on the 2007 regulations was requested or held; however, numerous comments were received. After considering the comments received, the IRS and Treasury Department adopt the 2007 regulations, with modifications, as final regulations under section 367(a). This Treasury decision also removes the temporary regulations and revises cross-references where appropriate to reflect the removal and replacement of the temporary regulations with final regulations.

Summary of Comments and Explanation of Revisions

A. Subsequent Nonrecognition Transfers—In General

The 2007 regulations provide specific exceptions for certain dispositions or other events that would otherwise require gain to be recognized under an existing GRA (triggering event). The exceptions generally apply to dispositions that qualify for nonrecognition treatment under the Code and require the U.S. transferor to enter into a new GRA with respect to the initial transfer for the remaining term of the existing GRA.

Several commentators asserted that the exceptions provided by the 2007 regulations did not literally apply to various dispositions qualifying for nonrecognition treatment because the entity making the transfer is not described in the relevant exception, thus inappropriately resulting in gain recognition under a GRA. For example, assume that in year 1 a domestic corporation, USP, transfers stock of a foreign corporation, FS1, to another foreign corporation, FS2, pursuant to an exchange to which section 351 applies (the initial transfer). USP files a GRA with respect to the initial transfer. In year 2, FS2 transfers the FS1 stock received from USP in year 1 to another foreign corporation, FS3, solely in exchange for stock of FS3 under section 351. The year 2 transfer of the FS1 stock by FS2 would constitute a triggering event for purposes of the GRA filed by USP with respect to the initial transfer, but the transfer qualifies for an exception under the 2007 regulations. USP complies with the requirements of the 2007 regulations with respect to the GRA filed for the initial transfer. In year 3, FS3 contributes the FS1 stock received from FS2 in year 2 to another foreign corporation, FS4, solely in exchange for stock of FS4 under section 351. The year 3 transfer of the FS1 stock by FS3 is a triggering event with respect to the GRA entered into by USP in connection with the initial transfer.

The 2007 regulations provide an exception for certain subsequent transfers of the transferred stock in a transaction to which section 351 applies (section 351 exchange), but the exception does not clearly apply when the transferor in the section 351 exchange is not the transferee foreign corporation. Commentators expressed similar concerns with respect to other nonrecognition transactions, including liquidations described in section 332 (section 332 liquidation), transactions to which section 355 applies (section 355 transactions), and transactions involving partnerships. The commentators suggested various alternatives for avoiding the inappropriate triggering of a GRA in such cases.

The IRS and Treasury Department agree that certain nonrecognition transactions that may not qualify for an exception under the 2007 regulations should not trigger an existing GRA. Because specific exceptions provide certainty to the relevant transactions,

the final regulations retain the exceptions of the 2007 regulations with modifications so that the exceptions apply to transactions involving one or more entities not clearly described in the 2007 regulations. For example, under the final regulations the exception for a section 351 exchange of the transferred stock applies to any transfer of the transferred stock regardless of the identity of the transferor. The final regulations include additional specific exceptions and a general exception for certain transactions that cannot be adequately covered by a specific exception because of the myriad factual permutations.

The general exception provided by the final regulations applies generally to any disposition or other event that would otherwise constitute a triggering event if the disposition is a nonrecognition transaction (as defined in section 7701(a)(45), but including an exchange described in section 351(b) or 356 even if all gain realized is recognized); a U.S. transferor retains a direct or indirect interest in the transferred stock or securities (or the assets of the transferred corporation, such as where the transferred corporation has liquidated in the interim); and the U.S. transferor that retains such direct or indirect interest enters into a new GRA with respect to the initial transfer. However, if, as a result of the disposition or other event, a foreign corporation acquires all or part of the transferred stock or securities (or substantially all the assets of the transferred corporation) the general exception shall apply only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total value of the outstanding stock of such foreign corporation immediately after the disposition or other event. This five percent ownership condition is intended to limit the application of the general exception in transactions where the U.S. transferor retains a minimal interest in the transferred stock or securities (or substantially all the assets of the transferred corporation). The final regulations include examples to illustrate the application of the general exception.

A disposition or other event to which the general exception applies shall be subject to the provisions of the final regulations to the same extent and in the same manner as a disposition or event to which a specific exception applies. For example, even though a specific exception is generally available for a section 351 exchange of the transferred stock by the transferee foreign corporation, the U.S. transferor must still recognize gain under the existing GRA to the extent the transferee foreign corporation would otherwise recognize gain in the exchange under section 351(b). The U.S. transferor must therefore similarly recognize gain in connection with a disposition or other event to which the general exception applies to the extent that the transferee foreign corporation would otherwise recognize gain in the exchange under section 351(b).

A new GRA filed under the general exception is generally subject to the same terms and conditions as the existing GRA, but must also describe the subsequent dispositions that would constitute triggering events (based on the principles of the final regulations, but not including any triggering event otherwise described in the final regulations) and include a statement that the U.S. transferor agrees to treat such dispositions as triggering events. In addition, the final regulations provide that, with respect to a new GRA filed under the general exception, a triggering event shall also include any other disposition or event that is inconsistent with the principles of the triggering event exceptions including, for example, an indirect disposition of the transferred stock or securities or of substantially all of the assets of the transferred corporation. This additional condition is similar to the condition applicable to a GRA filed in connection with an indirect stock transfer described in § 1.367(a)–3(d).

One commentator requested that an exception be provided for a securities lending transaction to which section 1058 applies. The final regulations do not provide such an exception.

B. Dispositions Pursuant to an Intercompany Transaction

Under the 2007 regulations, a complete or partial disposition by the U.S. transferor of the stock of the transferee foreign corporation received in the initial transfer generally requires the U.S. transferor to recognize gain under the GRA. Exceptions to this general rule are provided for certain nonrecognition transfers to which sections 351, 354, or 721 applies. As described further in part D. of this Preamble, the 2007 regulations provide further that a GRA shall instead terminate (in whole or in part) if the U.S. transferor disposes of all or part of the stock of the transferee foreign corporation received in the initial transfer pursuant to a transaction in which all gain realized is recognized currently and included in taxable income as a result of the disposition, but only if the basis of the stock disposed of (excluding certain adjustments to such basis) is not greater than the basis in the transferred stock or securities at the time of the initial transfer.

If the U.S. transferor disposes of stock of the transferee foreign corporation pursuant to an intercompany transaction (within the meaning of § 1.1502–13) that is not described in section 351 or 354, the conditions for terminating the existing GRA (in whole or in part) are not satisfied because, under the provisions of § 1.1502–13, the U.S. transferor generally defers taking into account any gain realized and recognized on the disposition. Thus, such a disposition would be a triggering event.

Several commentators asserted that it is inappropriate to require the U.S. transferor to recognize gain under the GRA in such cases because the stock of the transferee foreign corporation remains within the consolidated group of which the U.S. transferor is a member. It is also inappropriate to terminate the GRA because the intercompany item has not been taken into account. Instead, the commentators recommended that the GRA remain in effect for its remaining term. The IRS and Treasury Department agree with this recommendation, and the final regulations provide a specific exception for dispositions of stock of the transferee foreign corporation pursuant to an intercompany transaction (intercompany transaction exception) to which a specific triggering event exception does not apply. If the intercompany transaction exception applies, the U.S. transferor remains subject to the existing GRA. But see the discussion below when the intercompany transaction is a nonrecognition transaction in which an amount of gain is recognized.

The intercompany transaction exception is available if two conditions are satisfied. The first condition is that the basis of the stock of the transferee foreign corporation disposed of in the intercompany transaction is not greater than the sum of the aggregate basis in the transferred stock or securities at the time of the initial transfer, any increase to the basis of the transferred stock or securities by reason of gain recognized by the U.S. transferor in connection with the initial transfer, and any increase to the basis of the stock of the transferee foreign corporation by reason of income inclusions by the U.S. transferor (for example, pursuant to section 961). To satisfy this basis condition, the U.S. transferor can elect to reduce the basis of the stock of the transferee foreign corporation, effective

immediately before the intercompany transaction.

The second condition is that the annual certification filed with respect to the existing GRA for the taxable year during which the intercompany transaction occurs includes a complete description of the intercompany transaction and a schedule illustrating how the basis condition is satisfied.

Because the final regulations provide specific exceptions for certain nonrecognition transfers of stock of the transferee foreign corporation (for example, pursuant to a section 351 exchange), the new intercompany transaction exception applies only to the extent the intercompany transaction gives rise to an intercompany item (as defined in § 1.1502–13(b)(2)). If the intercompany item is a gain, the existing GRA must be divided into two separate agreements—one that remains with the U.S. transferor (of an amount equal to the intercompany item) and another that moves to the acquiring member (of an amount equal to the remaining amount of the existing GRA amount). For example, assume the amount of the existing GRA is $100x, the intercompany transaction is described in section 351(b), and the U.S. transferor recognizes $20x gain (the intercompany item) in the intercompany transaction. The intercompany transaction exception applies to the extent of the $20x intercompany item, and the exception for section 351 exchanges applies to the remainder of the transfer. Thus, the U.S. transferor remains subject to a $20x GRA (to the extent of the $20x intercompany item), and the acquiring member becomes subject to an $80x GRA. This result is similar to that of a transfer of the stock of the transferee foreign corporation to a domestic acquiring corporation in a section 351 exchange that is not an intercompany transaction but in which the U.S. transferor recognizes gain under section 351(b). In such a case, the amount of the new GRA entered into by the domestic acquiring corporation is reduced by the amount of gain recognized by the U.S. transferor on the transfer under section 351(b). The U.S. transferor does not remain subject to a GRA because the gain recognized under section 351(b) is taken into account. By contrast, if the section 351 exchange were an intercompany transaction, the U.S. transferor must remain subject to a GRA in an amount equal to the gain recognized under section 351(b) because the gain has not been taken into account.

If the intercompany item is a loss, however, the U.S. transferor shall remain subject to the entire GRA. In addition, in such a case, the termination rule that applies to dispositions of the stock of the transferee foreign corporation in which all realized gain is recognized and included in taxable income during the taxable year of the disposition shall not apply.

The final regulations provide rules to coordinate the subsequent inclusion in taxable income of an intercompany item and an amount of gain recognized under the GRA. Generally, under the coordination rule, if subsequent to an intercompany transaction to which the intercompany transaction exception applies, a disposition or other event occurs that requires the U.S. transferor to take into account the intercompany item related to the intercompany transaction (under the provisions of § 1.1502–13), the disposition shall not constitute a triggering event. Instead the GRA shall terminate without further effect or the amount of gain subject to the GRA shall be reduced based on the principles of the termination rule that applies to certain dispositions of the stock of the transferee foreign corporation received in the initial transfer. The final regulations include an example illustrating this rule.

C. Divisive Reorganizations

The preamble to the 2007 regulations requested comments concerning whether specific exceptions should be provided for divisive reorganizations involving the U.S. transferor, the transferee foreign corporation, or the transferred corporation. No comments were received. However, the final regulations provide a specific exception for divisive reorganizations involving a transfer of the stock of the transferee foreign corporation received in the initial transfer to a domestic corporation (domestic controlled corporation) before the distribution of the stock of the domestic controlled corporation. The specific exception applies if the domestic controlled corporation enters into a new GRA with respect to the initial transfer. The IRS and Treasury Department expect the general exception to apply to other divisive reorganizations, as appropriate. The final regulations include examples illustrating the application of the general exception to divisive reorganizations.

D. GRA Termination Events

If certain conditions are met, under the 2007 regulations an existing GRA terminates without further effect (termination rule) if the U.S. transferor (or other specified United States persons) re-acquires the transferred stock or securities, or the U.S. transferor disposes of the stock of the transferee foreign corporation received in the initial transfer. One condition for the application of the termination rule is that, with certain adjustments, the basis of the transferred stock or securities in the hands of the U.S. transferor (or other specified United States person) immediately following the acquisition or the basis of stock of the transferee foreign corporation disposed of by the U.S. transferor, as relevant, must not be greater than the basis of the transferred stock or securities at the time of the initial transfer. To satisfy this basis condition, the 2007 regulations generally permit the U.S. transferor (or other United States person) to reduce the basis of the transferred stock or securities (or the stock of the transferee foreign corporation, as applicable). The 2007 regulations further permit an increase to basis of other stock or securities in the transferred corporation (or stock of the transferee foreign corporation, as applicable) by a corresponding amount, but not in excess of fair market value.

The final regulations retain the termination rule and the conditions for its application, including the option to reduce basis. However, the IRS and Treasury Department have determined that it is inappropriate to permit the shifting of basis to other stock or securities in the case of an election to reduce the basis of stock or securities. The final regulations, therefore, do not permit the U.S. transferor (or other United States person) to increase the basis of other stock or securities of the transferred corporation (or stock of the transferee foreign corporation, as applicable). The general exception, however, may apply allowing the U.S. transferor (or other United States person) to enter into a new GRA in connection with a transaction in which the transferred stock or securities are re-acquired in lieu of reducing the basis of the transferred stock or securities.

One commentator questioned whether the termination rule applies in the case of a downstream asset reorganization of the transferee foreign corporation into the transferred corporation because the U.S. transferor receives newly-issued stock of the transferred corporation in the transaction and not the stock transferred in the initial transfer. The IRS and Treasury Department believe it is appropriate for the termination rule to apply in the case of such downstream asset reorganizations. Accordingly, by revising the location of a rule contained in the 2007 regulations, the final regulations clarify that the term *transferred stock or securities* includes any stock or securities of the transferred

corporation with a basis determined, in whole or in part, by reference to the basis of the stock or securities transferred in the initial transfer. Thus, in the case of a downstream asset reorganization, for purposes of the termination rule, the newly-issued stock of the transferred corporation deemed distributed by the transferee foreign corporation to the U.S. transferor under section 361(c) is the stock transferred in the initial transfer.

The 2007 regulations provide an exception for certain expropriation losses that would otherwise constitute triggering events. The final regulations modify the rule to provide instead that the amount of gain subject to a GRA is reduced to the extent a loss is sustained with respect to stock of the transferee foreign corporation, the transferred stock or securities, or substantially all the assets of the transferred corporation by reason of an expropriation of such property by the government of a foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

E. Transfers by U.S. Transferor Pursuant to an Outbound Asset Reorganization

The 2007 regulations provide an exception for a transfer of stock of the transferee foreign corporation by the U.S. transferor to a domestic corporation pursuant to an asset reorganization described in section 368(a)(1). See § 1.367(a)–8T(e)(3)(i). The preamble to the 2007 regulations requested comments concerning whether an exception should also be provided for an outbound transfer of the stock of the transferee foreign corporation by the U.S. transferor to a foreign corporation pursuant to an asset reorganization described in section 368(a)(1). No comments were received. However, after studying the issue further and considering the principles of the proposed regulations recently issued under sections 367(a)(5), 367(b), and 1248(f) (73 FR 49278), the IRS and Treasury Department have determined that it is appropriate for an exception to apply to such an outbound transfer. The final regulations do not include a specific exception for such outbound transfers, but the IRS and Treasury Department expect the general exception provided by the final regulations to apply to such transfers, as appropriate. The final regulations include an example illustrating the application of the general exception to such a transfer.

F. Ordering Rule if Triggering Event Affects Multiple GRAs

The final regulations provide an ordering rule to determine the amount of gain recognized under a GRA when a disposition or other event requires gain to be recognized under more than one GRA. The ordering rule adopts a ''first-in-time'' approach, providing that gain must first be recognized under the GRA that relates to the earliest initial transfer, then under the GRA that relates to the transfer immediately following the initial transfer, and so forth until the appropriate amount of gain under each GRA has been recognized. This ordering rule clarifies that the gain recognized under a GRA is determined after taking into account any increase to the basis of the transferred stock or securities resulting from gain recognized under another GRA that relates to an earlier initial transfer. The final regulations include an example to illustrate the ordering rule.

G. Section 301 Distributions

The 2007 regulations define a disposition as any transfer that would constitute a disposition for any purpose of the Code and the regulations under the Code, but exclude a stock redemption described under section 302(d) (dividend equivalent redemption) to the extent section 301(c)(1) applies. One commentator requested that the final regulations clarify whether the rule for dividend equivalent redemptions applies to redemptions of stock of the transferee foreign corporation, the transferred corporation, or both. The commentator also requested that the final regulations confirm that a distribution of property to which section 301(c)(2) applies (including in the case of a dividend equivalent redemption) does not constitute a disposition of the relevant stock.

The final regulations provide that a disposition generally does not include the receipt of a distribution of property with respect to stock to which section 301 applies, including by reason of section 302(d). The final regulations provide further that a dividend equivalent redemption shall constitute a disposition if the U.S. transferor does not enter into a new GRA that includes appropriate provisions to account for the redemption. The final regulations include an example illustrating this rule and describing the types of appropriate provisions that should be included in the new GRA. The provisions to be included in the GRA are necessary, for example, to account for a dividend equivalent redemption that occurs pursuant to a transaction to which section 304(a)(1) applies and in which the transferor does not retain a direct or indirect interest in the acquiring corporation. In such a case, the GRA would need to provide appropriate provisions to account for indirect dispositions of the transferred stock that should require gain to be recognized under the new GRA.

The final regulations provide that the U.S. transferor must recognize gain under a GRA to the extent gain is recognized under section 301(c)(3) with respect to the transferred stock and that the amount of gain subject to the GRA is reduced to the extent the U.S. transferor recognizes gain under section 301(c)(3) with respect to the stock of the transferee foreign corporation received in the initial transfer.

H. Elections Under Section 338

One commentator requested that the final regulations provide an exception for a deemed sale of the assets of the transferred corporation or the transferee foreign corporation by reason of an election under section 338(g). The commentator posited a fact pattern where the U.S. transferor entered into a GRA in connection with a transfer of less than 20 percent of the outstanding stock of the transferred corporation to the transferee foreign corporation, and, within the GRA term, the transferee foreign corporation acquires additional stock of the transferred corporation constituting a qualified stock purchase (within the meaning of section 338(d)(3)) and makes an election under section 338(g) with respect to such acquisition. The deemed asset sale that results from the section 338(g) election is a sale for all purposes of the Code (see § 1.338–2(c)(6)) and thus, under the 2007 regulations, would require the U.S. transferor to recognize the full amount of gain subject to the GRA. The commentator asserted that providing an exception for such a deemed asset sale was consistent with the policies of the GRA regime because the deemed asset sale is not a monetization of the assets or stock of the transferred corporation.

The IRS and Treasury Department agree with the commentator, and the final regulations provide that a deemed sale of assets of the transferred corporation or the transferee foreign corporation by reason of an election under section 338(g) shall not constitute a triggering event for purposes of the GRA. However, the sale of stock of the target corporation pursuant to the qualified stock purchase shall be taken into account for purposes of a GRA. The sale of stock of the transferred or transferee foreign corporation by the

seller should either require gain to be recognized under a GRA or terminate the GRA without further effect if the conditions for the termination rule are satisfied, even if an election under section 338(g) is made.

By contrast, a deemed sale of assets of a domestic corporation by reason of an election under section 338(h)(10) shall continue to be taken into account for purposes of § 1.367(a)–8. Thus, for example, if an election under section 338(h)(10) were made with respect to the U.S. transferor, the deemed sale of the stock of the transferee foreign corporation held by the U.S. transferor would constitute a disposition of such stock that either requires gain to be recognized under the GRA or terminates the GRA if the conditions for the termination rule are satisfied.

On August 22, 2008, the IRS and Treasury Department issued proposed regulations under section 336(e) (REG–143544–04, 2008–42 IRB 947) that provide rules generally consistent with the rules that apply to elections under section 338(h)(10). The proposed regulations under section 336(e) shall be applicable to dispositions occurring on or after the proposed regulations are published as final regulations in the **Federal Register**. The proposed regulations do not apply if the selling corporation or the target corporation is foreign. When final regulations under section 336(e) are promulgated, the IRS and Treasury Department anticipate that a deemed asset sale pursuant to a section 336(e) election with respect to a domestic corporation shall be taken into account for purposes of § 1.367(a)–8, similar to a deemed asset sale pursuant to an election under section 338(h)(10). Comments are requested in this regard, including what special rules would be required with respect to an existing GRA if an election under section 336(e) were permitted if the selling corporation or the target corporation were foreign.

I. Expatriation Under Section 877A

The 2007 regulations provide that a GRA shall be triggered immediately before the date on which an individual U.S. transferor loses United States citizenship or ceases to be taxed as a lawful permanent resident (as defined in section 877(e)(2)). This rule applies even if the individual U.S. transferor would have recognized gain with respect to the stock of the transferee foreign corporation under section 877. The final regulations generally retain this rule, modified for the enactment of section 877A. Further, the final regulations make clear that the termination rule that applies in certain cases where the U.S. transferor disposes of the stock of the transferee foreign corporation is not applicable to an individual U.S. transferor that is subject to section 877A.

J. GRA Content

Comments were received regarding whether the information required with a GRA could instead be made available by the U.S. transferor ''upon request.'' The final regulations confirm that the information required with a GRA must be included with the GRA as filed with the tax return of the U.S. transferor.

K. Other Changes

Under the 2007 regulations, certain dispositions that qualify for an exception nonetheless require the U.S. transferor to recognize gain under the existing GRA. For example, to the extent the transferee foreign corporation would be required to recognize gain under section 351(b) or 356(a)(1) in connection with an exchange of the transferred stock, the U.S. transferor must recognize gain under the GRA notwithstanding that an exception applies to the exchange of the transferred stock. The final regulations retain this rule; however, the final regulations refer to any disposition or event that requires gain to be recognized under a GRA as a ''gain recognition event.'' A gain recognition event includes a triggering event, a disposition that would constitute a triggering event but for the application of an exception (such as the section 351(b) or 356 exchange described above), and a section 301 distribution that would require gain to be recognized under section 301(c)(3) with respect to the transferred stock.

The final regulations clarify the amount of gain subject to a GRA that is filed by a domestic corporate shareholder of a domestic corporation (the U.S. transferor) that transfers stock or securities to the transferee foreign corporation pursuant to an outbound asset reorganization that is subject to section 367(a)(5) and the regulations under that section.

The final regulations clarify that, if a GRA is entered into in connection with a transfer of a partnership interest, a complete or partial disposition of such partnership interest shall constitute a triggering event for purposes of the GRA.

The 2007 regulations provide exceptions for certain dispositions of stock of the transferee foreign corporation or of substantially all the assets of the transferred corporation that are described in section 351, 354 (but only in the case of a reorganization described in section 368(a)(1)(B)), or 721, if, in addition to other requirements, the U.S. transferor complies with requirements similar to those for the exception that applies to similar dispositions of the transferred stock or securities. See § 1.367(a)–8T(e)(1)(ii). In response to comments requesting certainty concerning the requirements that must be satisfied, the final regulations identify the specific requirements that must be satisfied with respect to such dispositions.

The 2007 regulations provide that, if the transferred corporation is domestic and at the time of the initial transfer the U.S. transferor owned stock in the transferred corporation satisfying the requirements of section 1504(a)(2), the GRA shall terminate without further effect if the transferred corporation disposes of substantially all of its assets in a transaction in which all gain realized is recognized currently. The final regulations retain this termination rule but add, as an additional condition for its application, that the U.S. transferor and the transferred corporation were members of the same consolidated group on the date of the initial transfer. This change was made because the IRS and Treasury Department expect a lesser degree of inside and outside basis disparity within a consolidated group.

The final regulations provide that, if the initial transfer and one or more dispositions or other events (even if an exception applies) that affect the GRA filed by the U.S. transferor with respect to the initial transfer occur within the same taxable year of such U.S. transferor, or if multiple dispositions or events that affect an existing GRA (even if an exception applies) occur in a taxable year of the U.S. transferor that does not include the initial transfer, the U.S. transferor is only required to enter into a single GRA for such taxable year. The GRA must describe the initial transfer and/or each subsequent disposition or other event that affects the GRA. This rule does not apply, however, if a disposition or other event requires a new GRA to be filed by a United States person that was not the U.S. transferor with respect to the existing GRA.

The final regulations provide that the determination of whether a disposition of substantially all of the assets of the transferred corporation has occurred shall be made on the basis of one or more related transactions. The final regulations provide further that the determination shall be made without regard to a disposition of assets described in section 1221(a)(1) in the ordinary course of business.

Effective/Applicability Dates

The final regulations generally apply to transfers of stock or securities occurring on or after March 13, 2009. The final regulations shall not apply to transfers of stock or securities occurring on or after March 13, 2009 that are entered into pursuant to a contract that was binding before February 11, 2009 (subject to customary conditions) and all times thereafter. However, taxpayers may apply the final regulations to such transfers provided the final regulations are applied consistently to all such transfers. Taxpayers may also apply the rules of the final regulations that were not already effective under § 1.367(a)–8 (see 26 CFR part 1, revised April 1, 2006) and § 1.367(a)–8T to any gain recognition agreement filed with respect to a transfer of stock or securities occurring on a date that is before March 13, 2009 and during a taxable year for which the period of limitations on assessments under section 6501(a) of the Code has not closed.

Availability of IRS Documents

IRS documents cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Effect on Other Documents

The following publication is obsolete as of February 11, 2009:

Notice 2005–74 (2005–2 CB 726).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that 5 U.S.C. 553(b) and (d) do not apply to these regulations.

It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in cross-border corporate transactions. Thus, the number of affected small entities—in whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they might hold a portfolio interest in stock or securities and in the unlikely event that they transfer such stock or securities to a foreign corporation. While a certain number of small entities may transfer stock or securities to a foreign corporation in connection with an acquisition or reorganization, the IRS and Treasury Department do not anticipate the number to be substantial. Furthermore, the IRS and Treasury Department estimate that those small entities that are affected by the regulations will likely face a burden of approximately two hours at an hourly rate of $200. Considering that the collections of information enable taxpayers to defer the current recognition of gain that is subject to a gain recognition agreement, the IRS and Treasury believe that $400 is not a significant economic impact. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Daniel McCall, formerly of the Office of the Associate Chief Counsel (International), and S. James Hawes of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.367(a)–3T(e) and 1.367(a)–8T to read in part as follows:

Authority: 26 U.S.C. 7805* * *

■ **Par. 2.** Section 1.338–1 is amended by adding a new sentence at the end of paragraph (a)(2), to read as follows:

§ 1.338–1. General principles; status of old target and new target.

(a) * * *

(2) * * * See also § 1.367(a)–8(k)(13) for a rule applicable to gain recognition agreements (filed under §§ 1.367(a)–3(b)(1)(ii) and 1.367(a)–8) and deemed asset sales as a result of an election under section 338(g).

* * * * *

§ 1.367(a)–3 [Amended]

■ **Par. 3.** For each entry in the table in the ''Section'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Section	Remove	Add
1.367(a)–3(c)(3)(iii)(B)(*1*)(*i*)(*A*)	1296(b)	1297(b).
1.367(a)–3(d)(2)(iii)	§ 1.367(a)–8T(b)(3)(i) and (d)	§ 1.367(a)–8(c)(1)(i).
1.367(a)–3(d)(2)(v)	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2)(i).
1.367(a)–3(d)(3), *Example 1*(ii), fourth sentence	§ 1.367(a)–8T(d)(1)	§ 1.367(a)–8(j)(1).
1.367(a)–3(d)(3), *Example 1*(ii), fourth sentence	§ 1.367(a)–8T(b)(1)(vii)	§ 1.367(a)–8(c)(2)(vi).
1.367(a)–3(d)(3), *Example 1*(ii), fifth sentence	§ 1.367(a)–8T(b)(1)(vii)	§ 1.367(a)–8(c)(2)(vi).
1.367(a)–3(d)(3), *Example 1A*(ii), first sentence	§ 1.367(a)–8T(a)(3)	§ 1.367(a)–8(d)(3) and (e)(1)(i).
1.367(a)–3(d)(3), *Example 1A*(ii), second sentence	§ 1.367(a)–8T(d)(4)	§ 1.367(a)–8(j)(5).
1.367(a)–3(d)(3), *Example 1A*(ii), second sentence	§ 1.367(a)–8T(e)(8)	§ 1.367(a)–8(k)(10).
1.367(a)–3(d)(3), *Example 4*(i), first sentence	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2)(i).
1.367(a)–3(d)(3), *Example 4*(ii), first sentence	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2).
1.367(a)–3(d)(3), *Example 4*(ii), second sentence	§ 1.367(a)–8T(g)(2)	§ 1.367(a)–8(o)(4).
1.367(a)–3(d)(3), *Example 5A*(ii), second to last sentence.	§ 1.367(a)–8T(g)(2)	§ 1.367(a)–8(o)(4).
1.367(a)–3(d)(3), *Example 6*(ii), last sentence	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2)(i).
1.367(a)–3(d)(3), *Example 7*(ii), second sentence	§ 1.367(a)–8T(g)(2)	§ 1.367(a)–8(o)(4).
1.367(a)–3(d)(3), *Example 7*(ii), third sentence	§ 1.367(a)–8T(e)(1)(iii)	§ 1.367(a)–8(k)(4).

Section	Remove	Add
1.367(a)–3(d)(3), *Example 7A*(ii), fourth sentence	§ 1.367(a)–8T(g)(2)	§ 1.367(a)–8(o)(4).
1.367(a)–3(d)(3), *Example 7A*(ii), last sentence	§ 1.367(a)–8T(b)(5)	§ 1.367(a)–8(g).
1.367(a)–3(d)(3), *Example 7A*(ii), last sentence	§ 1.367(a)–8T(e)(1)(iii)	§ 1.367(a)–8(k)(4).
1.367(a)–3(d)(3), *Example 8*(ii), second to last sentence.	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2)(i).
1.367(a)–3(d)(3), *Example 9*(ii), last sentence	§ 1.367(a)–8T(d)(2)	§ 1.367(a)–8(j)(2)(i).
1.367(a)–3(d)(3), *Example 11*(ii), sixth sentence	§ 1.367(a)–8T(d)(1)	§ 1.367(a)–8(j)(1).
1.367(a)–3(d)(3), *Example 11*(ii), sixth sentence	§ 1.367(a)–8T(b)(1)(vii)	§ 1.367(a)–8(c)(2)(vi).
1.367(a)–3(d)(3), *Example 12*(ii), third sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
1.367(b)–4(b)(1)(iii), *Example 4*(i), last sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
1.367(b)–13(a)(2)(iii)	or (iii) or in sections 368(a)(1)(G) and (a)(2)(D)	(iii), or (v).

■ **Par. 4.** For each entry in the table, redesignate the paragraph designated in the ''Old Paragraph'' column as the new paragraph designation in the ''New Paragraph'' column to read as follows:

§ 1.367(a)–3(g) [Redesignated]

Section 1.367(a)–3(g) is redesignated as follows:

Old paragraph	New paragraph
1.367(a)–3(g)(1)(A)	1.367(a)–3(g)(1)(i)
1.367(a)–3(g)(1)(B)	1.367(a)–3(g)(1)(ii)
1.367(a)–3(g)(1)(B)(*1*)	1.367(a)–3(g)(1)(ii)(A)
1.367(a)–3(g)(1)(B)(*2*)	1.367(a)–3(g)(1)(ii)(B)
1.367(a)–3(g)(1)(B)(*3*)	1.367(a)–3(g)(1)(ii)(C)
1.367(a)–3(g)(1)(B)(*4*)	1.367(a)–3(g)(1)(ii)(D)
1.367(a)–3(g)(1)(B)(*5*)	1.367(a)–3(g)(1)(ii)(E)
1.367(a)–3(g)(1)(B)(*6*)	1.367(a)–3(g)(1)(ii)(F)
1.367(a)–3(g)(1)(C)	1.367(a)–3(g)(1)(iii)
1.367(a)–3(g)(1)(D)	1.367(a)–3(g)(1)(iv)
1.367(a)–3(g)(1)(D)(*1*)	1.367(a)–3(g)(1)(iv)(A)
1.367(a)–3(g)(1)(D)(*2*)	1.367(a)–3(g)(1)(iv)(B)
1.367(a)–3(g)(1)(D)(*3*)	1.367(a)–3(g)(1)(iv)(C)
1.367(a)–3(g)(1)(E)	1.367(a)–3(g)(1)(v)
1.367(a)–3(g)(1)(F)	1.367(a)–3(g)(1)(vi)
1.367(a)–3(g)(2)(G)	1.367(a)–3(g)(1)(vii)

■ **Par. 5.** Section 1.367(a)–3 is amended by:

■ 1. In the first sentence of paragraph (b)(1), remove the words ''Except as provided in section 367(a)(5)'' and add ''Except as provided in section 367(a)(5) and paragraph (e) of this section'' in their place.

■ 2. In the first sentence of paragraph (c)(1), remove the words ''Except as provided in section 367(a)(5)'' and add ''Except as provided in section 367(a)(5) and paragraph (e) of this section'' in their place.

■ 3. Revising paragraphs (d)(2)(iv).

■ 4. Revising the last sentence of paragraph (d)(3), *Example 5*(ii).

■ 5. Removing the last sentence of paragraph (d)(3), *Example 5A*(ii).

■ 6. Revising paragraph (e).

■ 7. Removing and reserving paragraph (f).

■ 8. Revising the heading for paragraph (g) and adding new paragraph (g)(1)(viii).

The revisions and addition read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(iv) *Gain recognition agreements involving multiple parties.* The U.S. person's agreement to recognize gain, as provided in § 1.367(a)–8, shall include appropriate provisions consistent with the principles of § 1.367(a)–8. See *Examples 5* and *5A* of this section and § 1.367(a)–8(j)(9).

* * * * *

(3) * * *

Example 5. * * *

(ii) * * * Under § 1.367(a)–8(j)(9), the gain recognition agreement would be triggered if F sold all or a portion of the stock of S.

* * * * *

(e) *Transfers by a domestic corporation to a foreign corporation in a section 361 exchange*—(1) *General rule.* If a domestic corporation (U.S. transferor) transfers stock or securities to a foreign corporation (transferee foreign corporation) in an exchange described in section 361(a) or (b), or in an exchange described in section 351 that is also described in section 361(a) or (b) (collectively, a section 361 exchange), such transfer shall be subject to section 367(a)(1), unless the conditions of paragraphs (e)(1)(i) through (iv) of this section are satisfied.

(i) The conditions set forth in section 367(a)(5) and any regulations under that section have been satisfied including that:

(A) The U.S. transferor is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (control group members) at the time of the section 361 exchange;

(B) The U.S. transferor recognizes the amount of the gain realized in the section 361 exchange that is allocable to any shareholder that is not a control group member (based on the value of the ownership interest in the U.S. transferor held by the shareholder at the time of the section 361 exchange);

(C) The U.S. transferor recognizes the amount of the gain realized in the section 361 exchange allocable to a control group member that cannot be preserved in the stock received by the control group member in the transaction; and

(D) Appropriate adjustments are made to the basis of the stock received by each control group member in the transaction.

(ii) If the stock or securities transferred in the section 361 exchange are of a domestic corporation, the conditions in paragraphs (c)(1)(i), (ii), and (iv) of this section are satisfied.

(iii) Each control group member that owns five percent or more (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power or the total fair market value of the stock of the transferee foreign corporation immediately after the transaction enters into a gain recognition agreement as provided in § 1.367(a)–8. The amount of gain subject to the gain recognition agreement shall equal the amount of the gain realized by the U.S. transferor on the transfer of the stock or securities in the section 361 exchange that is allocable to such control group member (based on the ownership interest (by value) in the U.S. transferor held by the control group member at the time of the section 361 exchange) reduced by the amount of such allocable gain that is recognized by the U.S. transferor with respect to the control group member. The gain recognition agreement shall designate the control group member as the U.S. transferor for purposes of paragraphs (b) and (c) of this section and § 1.367(a)–8.

(iv) Each control group member that enters into a gain recognition agreement pursuant to paragraph (e)(1)(iii) of this section makes the election described in § 1.367(a)–8(c)(2)(vi).

(2) *Certain triangular asset reorganizations.* If a transfer of stock or securities described in paragraph (e)(1) of this section is pursuant to a triangular

asset reorganization described in § 1.358–6(b)(2)(i) through (iii), the gain recognition agreement filed by a control group member pursuant to paragraph (e)(1)(iii) of this section shall include provisions consistent with the principles of § 1.367(a)–8 to account for all the parties to the reorganization. See § 1.367(a)–8(j)(9).

(3) *Examples.* The following examples illustrate the provisions of paragraph (e)(1) of this section. Except as otherwise indicated, assume US1, US2, USP, and UST are domestic corporations; US1 and US2 are not related; CFC1, CFC2, FA, and FC are foreign corporations; the section 1248 amount attributable to the stock of a foreign corporation is zero; and section 7874 does not apply to the transaction.

Example 1. Outbound asset reorganization. (i) *Facts.* US1 and US2 own 60% and 40%, respectively, of the outstanding stock of UST. UST wholly owns FC. The FC stock held by UST has a $20x basis and a $100x fair market value. UST merges with and into FC in an asset reorganization described in section 368(a)(1)(A). In the section 361 exchange that is part of the reorganization, UST transfers all of its FC stock to FA. UST distributes the FA stock it received in the section 361 exchange to US1 and US2 pursuant to the plan of reorganization. The conditions set forth in the second sentence of section 367(a)(5) and the regulations under that section are satisfied, including adjusting the basis of the FA stock received by US1 and US2 in the reorganization, as appropriate. After the reorganization, US1 and US2 own 6% and 4%, respectively, of the outstanding stock of FA.

(ii) *Result.* If the conditions of paragraph (e)(1)(i) through (iv) of this section are satisfied, the transfer of the FC stock by UST to FA in the section 361 exchange is not subject to section 367(a)(1). Because US1 and US2 complied with the requirements of section 367(a)(5), the requirement of paragraph (e)(1)(i) of this section is satisfied. Paragraph (e)(1)(ii) of this section is not applicable because FC is a foreign corporation. Pursuant to paragraph (e)(1)(iii) of this section, US1 enters into a gain recognition agreement with respect to its share of the gain realized by UST on the transfer of the FC stock to FA in the section 361 exchange ($48x, or 60% of $80x). The amount of gain subject to the gain recognition agreement is $48x because UST did not recognize any amount of such gain under section 367(a)(5) or the regulations under that section with respect to US1. US1 is designated as the U.S. transferor on the gain recognition agreement for purposes of paragraph (b) of this section and § 1.367(a)–8. US1 makes the election described in § 1.367(a)–8(c)(2)(vi) with respect to the gain recognition agreement. Because US2 owns less than 5% of the stock of FA after the reorganization, US2 is not required to enter into a gain recognition agreement with respect to its share of the gain realized by UST on the transfer of the FC stock to FA in the section 361 exchange.

(iii) *Alternate facts.* The facts are the same as in paragraph (i) of this *Example,* except that, in year 4, FA disposes of 25% of the FC stock in a taxable exchange. Under § 1.367(a)–8(c)(1)(i) and (j)(1), the partial disposition of the FC stock requires US1 to include in income 25% of the gain subject to the gain recognition agreement filed in year 1 ($12x, or 25% of $48x) and pay applicable interest on any additional tax due on such inclusion.

(iv) *Alternate facts.* The facts are the same as in paragraph (iii) of this *Example,* except that US1 and US2 are members of a consolidated group of which USP is the common parent. Because US2 is considered to own at least 5% of the stock of FA following the reorganization by reason of the attribution rules of section 318, as modified by section 958(b), a gain recognition agreement must also be entered into on behalf of US2 with respect to the amount of the gain realized but not recognized by UST on the transfer of the FC stock to FA that is allocable to US2 ($32x, or 40% of $80x). Under § 1.367(a)–8(d)(3) and § 1.1502–77(a)(1), USP enters into the gain recognition agreements on behalf of US1 and US2. In year 4, US1 and US2 must include in income 25% of the amount of gain subject to their respective gain recognition agreement ($12x for US1 and $8x for US2) and pay applicable interest on any additional tax due on such inclusion.

Example 2. Divisive reorganization. (i) *Facts.* US1 wholly owns UST. The UST stock has a $120x basis and $150x fair market value. UST wholly owns CFC2. The CFC2 stock has a $20x basis and a $50x fair market value. UST also owns Business A that has a fair market value of $100x. In a divisive reorganization that satisfies the requirements of section 368(a)(1)(D), UST transfers the CFC2 stock to CFC1, a newly-formed corporation, in exchange solely for CFC1 stock. The transfer of the CFC2 stock to CFC1 is a section 361 exchange. UST then distributes the CFC1 stock to US1 in a transaction that qualifies under section 355. Under section 358, the pre-exchange basis in the UST stock ($120x) is allocated between the UST stock and the CFC1 stock based on the relative fair market values of such stock. Therefore, immediately after the transaction, the basis of the UST stock is $80x ($120x multiplied by $100x/$150x), and the basis of the CFC1 stock is $40x ($120x multiplied by $50x/$150x). The conditions set forth in section 367(a)(5) and the regulations under that section are satisfied, including reducing the basis of the CFC1 stock received by US1 in the transaction by $20x so that the $30x built-in gain in the CFC2 stock transferred in the section 361 exchange is preserved in the CFC1 stock received by US1 in the transaction.

(ii) *Result.* Because US1 complied with the requirements of section 367(a)(5) and regulations under that section, the requirement of paragraph (e)(1)(i) of this section is satisfied. Paragraph (e)(1)(ii) of this section is not applicable because CFC2 is a foreign corporation. Pursuant to paragraph (e)(1)(iii) of this section, US1 enters into a gain recognition agreement with respect to its share of the gain realized by UST on the transfer of the CFC2 stock to CFC1 in the section 361 exchange ($30x). The amount of gain subject to the gain recognition agreement is $30x because UST did not recognize any amount of such gain under section 367(a)(5) or the regulations under that section with respect to US1. US1 is designated as the U.S. transferor on the gain recognition agreement for purposes of paragraph (b) of this section and § 1.367(a)–8. US1 makes the election described in § 1.367(a)–8(c)(2)(vi) with respect to the gain recognition agreement.

(4) *Cross-references.* For other examples that illustrate the application of this paragraph (e), see § 1.367(a)–8(q)(2), *Examples 6* and *24.* For rules relating to an acquisition of the stock of a foreign corporation by another foreign corporation in a section 361 exchange, see § 1.367(b)–4(b)(1)(iii), *Example 4.* For rules relating to certain distributions of stock of a foreign corporation by a domestic corporation, see section 1248(f) and the regulations under that section.

(f) [Reserved].

(g) *Effective/applicability date*—(1) * * *

(viii)(A) Except as provided in this paragraph (g)(1)(viii), the rules of paragraph (e) of this section apply to transfers of stock or securities occurring on or after March 13, 2009. For matters covered in this section for periods before March 13, 2009, but on or after March 7, 2007, the rules of § 1.367(a)–3T(e) (see 26 CFR part 1, revised April 1, 2007) apply. For matters covered in this section for periods before March 7, 2007, but on or after July 20, 1998, the rule of § 1.367(a)–8(f)(2)(i) (see 26 CFR part 1, revised April 1, 2006) applies.

(B) Taxpayers may apply the rules of § 1.367(a)–3(e) to transfers occurring before March 13, 2009, and during a taxable year for which the period of limitations on assessments under section 6501(a) has not closed, if done consistently to all such transfers occurring during each taxable year. A taxpayer applies the rules of § 1.367(a)–3(e) to transfers occurring before March 13, 2009, and during a taxable year for which the period of limitations on assessments under section 6501(a) has not closed, by including the gain recognition agreement, annual certification, or other information filing, that is required as a result of the rules of § 1.367(a)–3(e) applying to such a transfer, with an amended tax return for the taxable year in which the transfer occurs that is filed on or before *August 10, 2009.* A taxpayer that wishes to apply the rules of § 1.367(a)–3(e) to transfers occurring before *March 13, 2009*, and during a taxable year for which the period of limitations on assessments under section 6501(a) has

not closed but that fails to meet the filing requirement described in the preceding sentence must request relief for reasonable cause for such failure as provided in § 1.367(a)–8.

* * * * *

§ 1.367(a)–3T [Removed]

■ Par. 6 Section 1.367(a)–3T is removed.

■ Par. 7. Section 1.367(a)–8 is revised to read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

(a) *Scope.* This section provides the terms and conditions for a gain recognition agreement entered into by a United States person pursuant to § 1.367(a)–3(b) through (e) in connection with a transfer of stock or securities to a foreign corporation pursuant to an exchange that would otherwise be subject to section 367(a)(1). Paragraph (b) of this section provides definitions and special rules. Paragraphs (c) through (h) of this section identify the form, content, and other conditions of a gain recognition agreement. Paragraph (i) of this section is reserved. Paragraph (j) of this section identifies certain events that may require gain to be recognized under a gain recognition agreement. Paragraph (k) of this section provides exceptions for certain events that would otherwise require gain to be recognized under a gain recognition agreement. Paragraph (l) of this section is reserved. Paragraph (m) of this section provides rules that require gain to be recognized under a gain recognition agreement in connection with certain events to which an exception under paragraph (k) of this section otherwise applies. Paragraph (n) of this section provides special rules in the case of a distribution of property with respect to stock to which section 301 applies. Paragraph (o) of this section provides rules for certain transactions that terminate or reduce the amount of gain subject to a gain recognition agreement. Paragraph (p) of this section provides relief for reasonable cause for certain failures to comply with the requirements of this section. Paragraph (q) of this section provides examples that illustrate the rules of the section. Paragraph (r) of this section provides effective dates for the provisions of this section.

(b) *Definitions and special rules.* The following definitions and special rules apply for purposes of this section.

(1) *Definitions*—(i) *Asset reorganization*—(A) *General rule.* Except as provided in paragraph (b)(1)(i)(B) of this section, *an asset reorganization* is a reorganization described in section 368(a)(1) that involves an exchange of property described in section 361(a) or (b) (a section 361 exchange).

(B) *Exceptions.* An asset reorganization does not include the following:

(*1*) A reorganization described in section 368(a)(1)(D) or (G) if the requirements of section 354(b)(1)(A) and (B) are not met.

(*2*) For purposes of paragraphs (j)(2)(ii)(B), (k)(6)(ii), and (k)(6)(iii) of this section, a triangular asset reorganization. For rules applicable to a triangular asset reorganization, see paragraph (k)(7) of this section.

(ii) *A consolidated group* has the meaning set forth in § 1.1502–1(h).

(iii) *Disposition.* Except as provided in this paragraph (b)(1)(iii), a *disposition* includes any transfer that would constitute a disposition for any purpose of the Internal Revenue Code. A disposition includes an indirect disposition of the stock of the transferred corporation as described in § 1.367(a)–3(d). Except as provided in paragraph (n)(1) of this section, a disposition does not include the receipt of a distribution of property with respect to stock to which section 301 applies (including by reason of section 302(d)). See paragraphs (n)(2) and (o)(3) of this section for rules that apply if gain is recognized under section 301(c)(3). A complete or partial disposition by installment sale (under section 453) shall be treated as a disposition in the year of the installment sale.

(iv) A *gain recognition event* is an event described in paragraphs (j) through (o) of this section that requires gain to be recognized under a gain recognition agreement.

(v) The *initial transfer* means a transfer of stock or securities (transferred stock or securities) to a foreign corporation pursuant to an exchange that would otherwise be subject to section 367(a)(1) but with respect to which a gain recognition agreement is entered into by a United States person pursuant to § 1.367(a)–3(b) through (e).

(vi) An *intercompany item* has the meaning set forth in § 1.1502–13(b)(2).

(vii) An *intercompany transaction* has the meaning set forth in § 1.1502–13(b)(1).

(viii) A *nonrecognition transaction* has the meaning set forth in section 7701(a)(45). In addition, a nonrecognition transaction includes an exchange described in section 351(b) or 356 even if all gain realized in the exchange is recognized.

(ix) The terms *P, S,* and *T* have the meanings set forth in § 1.358–6(b)(1)(i), (ii), and (iii), respectively.

(x) The determination of whether *substantially all* of the assets of the transferred corporation have been disposed of is based on all the facts and circumstances.

(xi) A *timely-filed return* is a Federal income tax return filed by the due date set forth in section 6072(a) or (b), plus any extension of time to file such return granted under section 6081.

(xii) *Transferee foreign corporation.* Except as provided in this paragraph (b)(1)(xii), the *transferee foreign corporation* is the foreign corporation to which the transferred stock or securities are transferred in the initial transfer. In the case of an indirect stock transfer, the transferee foreign corporation has the meaning set forth in § 1.367(a)–3(d)(2)(i). The transferee foreign corporation also includes a corporation designated as the transferee foreign corporation in the case of a new gain recognition agreement entered into under this section.

(xiii) *Transferred corporation.* Except as provided in this paragraph (b)(1)(xiii), the *transferred corporation* is the corporation the stock or securities of which are transferred in the initial transfer. In the case of an indirect stock transfer, the transferred corporation has the meaning set forth in § 1.367(a)–3(d)(2)(ii). The transferred corporation also includes a corporation designated as the transferred corporation in the case of a new gain recognition agreement entered into under this section.

(xiv) A *triangular asset reorganization* is a reorganization described in § 1.358–6(b)(2)(i), (ii), (iii), or (v).

(xv) The *U.S. transferor* is the United States person (as defined in § 1.367(a)–1T(d)(1)) that transfers the transferred stock or securities to the transferee foreign corporation in the initial transfer. For purposes of determining the U.S. transferor in the case of a transfer by a partnership, see § 1.367(a)–1T(c)(3)(i). The *U.S. transferor* also includes the United States person designated as the U.S. transferor in the case of a new gain recognition agreement entered into under this section including, for example, under paragraph (k)(14) of this section.

(2) *Special rules*—(i) *Stock deemed received or transferred.* References to stock received include stock deemed received (for example, pursuant to section 367(c)(2)). References to a transfer of stock or securities include a deemed transfer of stock or securities.

(ii) *Stock of the transferee foreign corporation.* References to stock of the transferee foreign corporation include any stock of the transferee foreign corporation the basis of which is

determined, in whole or in part, by reference to the basis of the stock of the transferee foreign corporation received by the U.S. transferor in the initial transfer.

(iii) *Transferred stock or securities.* References to transferred stock or securities include any stock or securities of the transferred corporation the basis of which is determined, in whole or in part, by reference to the basis of the stock or securities transferred in the initial transfer.

(c) *Gain recognition agreement*—(1) *Terms of agreement*—(i) *General rule.* Except as provided in this paragraph (c)(1)(i), if a gain recognition event occurs during the period beginning on the date of the initial transfer and ending as of the close of the fifth full taxable year (not less than 60 months) following the close of the taxable year in which the initial transfer occurs (GRA term), the U.S. transferor must include in income the gain realized but not recognized on the initial transfer by reason of entering into the gain recognition agreement. In the case of a gain recognition event that occurs as a result of a partial disposition of stock, securities, or a partnership interest, as applicable, the U.S. transferor is required to recognize a proportionate amount of the gain subject to the gain recognition agreement, determined based on the fair market value of the stock, securities, or partnership interest, as applicable, disposed of (measured at the time of the partial disposition) as compared to the fair market value of all the stock, securities, or partnership interest, as applicable (measured at the time of the partial disposition). If the U.S. transferor must recognize gain under this paragraph as a result of an event described in paragraph (m) or (n) of this section, see those paragraphs to determine the amount of the gain that must be recognized. The amount of gain subject to the gain recognition agreement shall be reduced by the amount of gain recognized under this paragraph. If the amount of gain subject to the gain recognition agreement is reduced to zero, the gain recognition agreement shall terminate without further effect.

(ii) *Ordering rule for gain recognized under multiple gain recognition agreements.* If a gain recognition event occurs that requires gain to be recognized under multiple gain recognition agreements, gain shall first be recognized under the gain recognition agreement that relates to the earliest initial transfer, then under the gain recognition agreement that relates to the immediately following initial transfer and so forth until the appropriate amount of gain has been recognized under each gain recognition agreement. The amount of gain recognized under a gain recognition agreement shall be determined after taking into account, as appropriate, any increase to basis (including the basis of the transferred stock or securities) under paragraph (c)(4) of this section resulting from gain recognized under another gain recognition agreement. For an illustration of this ordering rule, see paragraph (q)(2) of this section, *Example 6.*

(iii) *Taxable year in which gain is reported*—(A) *Year of initial transfer.* Except as provided in paragraph (c)(1)(iii)(B) of this section, the U.S. transferor must report any gain recognized under paragraph (c)(1)(i) of this section on an amended Federal income tax return for the taxable year of the initial transfer. The amended return must be filed on or before the 90th day following the date on which the gain recognition event occurs.

(B) *Year of gain recognition event.* If an election under paragraph (c)(2)(vi) of this section is made with the gain recognition agreement or if paragraph (c)(5)(ii) of this section applies to the gain recognition agreement, the U.S. transferor must report any gain recognized under paragraph (c)(1)(i) of this section on its Federal income tax return for the taxable year during which the gain recognition event occurs. If an election under paragraph (c)(2)(vi) of this section is made with the gain recognition agreement or if paragraph (c)(5)(ii) of this section applies to the gain recognition agreement but the U.S. transferor does not report the gain recognized on its Federal income tax return for the taxable year during which the gain recognition event occurs, the Commissioner may require the U.S. transferor to report the gain on an amended Federal income tax return for the taxable year during which the initial transfer occurred.

(iv) *Offsets.* No special limitations apply with respect to offsetting gain recognized under paragraph (c)(1)(i) of this section with net operating losses, capital losses, credits against tax, or similar items.

(v) *Payment and reporting of interest.* Interest must be paid on any additional tax due with respect to gain recognized by the U.S. transferor under paragraph (c)(1)(i) of this section. Any interest due shall be determined based on the rates under section 6621 for the period between the date that was prescribed for filing the Federal income tax return of the U.S. transferor for the year of the initial transfer and the date on which the additional tax due is paid. If paragraph (c)(1)(iii)(B) of this section applies, any interest due must be included with the payment of tax due with the Federal income tax return of the U.S. transferor for the taxable year during which the gain recognition event occurs (or should reduce the amount of any refund due to the U.S. transferor for such taxable year). A schedule entitled ''Calculation of Section 367 Tax and Interest'' that separately identifies and calculates any additional tax and interest due must be included with the Federal income tax return on which any interest due is reported.

(2) *Content of gain recognition agreement.* The gain recognition agreement must be entitled ''GAIN RECOGNITION AGREEMENT UNDER § 1.367(a)–8'' and include the information described in paragraphs (c)(2)(i) through (viii) of this paragraph with the corresponding paragraph numbers. The information required under this paragraph (c)(2) and paragraph (c)(3) of this section must be included in the gain recognition agreement as filed.

(i) A statement that the document constitutes an agreement by the U.S. transferor to recognize gain in accordance with the requirements of this section.

(ii) A description of the transferred stock or securities and other information as required in paragraph (c)(3) of this section.

(iii) A statement that the U.S. transferor agrees to comply with all the conditions and requirements of this section, including to recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section, extend the statute of limitations on assessments of tax as provided in paragraph (f) of this section, and file the certification described in paragraph (g) of this section.

(iv) A statement that arrangements have been made to ensure that the U.S. transferor is informed of any events that affect the gain recognition agreement, including triggering events or other gain recognition events.

(v) In the case of a new gain recognition agreement filed under this section—

(A) A description of the event (such as a triggering event) and the applicable exception, if any, that gave rise to the new gain recognition agreement (such as a triggering event exception), including the date of the event and the name, address, and taxpayer identification number (if any) of each person that is a party to the event;

(B) As applicable, a description of the class, amount, and characteristics of the

stock, securities or partnership interest received in the transaction; and

(C) As applicable, a calculation of the amount of gain that remains subject to the new gain recognition agreement as a result of the application of paragraph (m), (n), or (o) of this section.

(vi) A statement whether the U.S. transferor elects to include in income any gain recognized under paragraph (c)(1)(i) of this section in the taxable year during which a gain recognition event occurs. See paragraph (c)(5)(ii) of this section for a rule that requires, in certain cases, for the gain recognized pursuant to a new gain recognition agreement to be included in income during the taxable year in which the gain recognition event occurs.

(vii) A statement whether a gain recognition event has occurred during the taxable year of the initial transfer.

(viii) A statement describing any disposition of assets of the transferred corporation during such taxable year other than in the ordinary course of business.

(3) *Description of transferred stock or securities and other information.* The gain recognition agreement shall include the following:

(i) A description of the transferred stock or securities including—

(A) The type or class, amount, and characteristics of the transferred stock or securities;

(B) A calculation of the amount of the built-in gain in the transferred stock or securities that are subject to the gain recognition agreement, reflecting the basis and fair market value on the date of the initial transfer;

(C) The amount of any gain recognized by the U.S. transferor on the initial transfer; and

(D) The percentage (by voting power and value) that the transferred stock (if any) represents of the total stock outstanding of the transferred corporation on the date of the initial transfer.

(ii) The name, address, place of incorporation, and taxpayer identification number (if any) of the transferred corporation.

(iii) The date on which the U.S. transferor acquired the transferred stock or securities.

(iv) The name, address and place of incorporation of the transferee foreign corporation, and a description of the stock or securities received by the U.S. transferor in the initial transfer, including the percentage of stock (by vote and value) of the transferee foreign corporation received in such exchange.

(v) If the initial transfer is described in § 1.367(a)–3(e), a statement that the conditions of section 367(a)(5) and any regulations under that section have been satisfied, and a description of any adjustments to the basis of the stock received in the transaction or other adjustments made pursuant to section 367(a)(5) and any regulations under that section.

(vi) If the transferred corporation is domestic, a statement describing the application of section 7874 to the transaction, and indicating that the requirements of § 1.367(a)–3(c)(1) are satisfied.

(vii) If the transferred corporation is foreign, a statement indicating whether the U.S. transferor was a section 1248 shareholder (as defined in § 1.367(b)–2(b)) of the transferred corporation immediately before the initial transfer, and whether the U.S. transferor is a section 1248 shareholder with respect to the transferee foreign corporation immediately after the initial transfer, and whether any reporting requirements or other rules contained in regulations under section 367(b) are applicable, and, if so, whether they have been satisfied.

(viii) If the initial transfer involves a transfer by a partnership (see § 1.367(a)–1T(c)(3)(i)) or a transfer of a partnership interest (see section 367(a)(4) and § 1.367(a)–1T(c)(3)(ii)) a complete description of the transfer, including a description of the partners in the partnership.

(ix) If the transaction involved the transfer of property other than the transferred stock or securities and the transaction was subject to the indirect stock transfer rules of § 1.367(a)–3(d), a statement indicating whether—

(A) The reporting requirements under section 6038B have been satisfied with respect to the transfer of such other property;

(B) Whether gain was recognized under section 367(a)(1);

(C) Whether section 367(d) applied to the transfer of such property; and

(D) Whether the other property transferred qualified for the active foreign trade or business exception under section 367(a)(3).

(4) *Basis adjustments for gain recognized.* The following basis adjustments shall be made if gain is recognized under paragraph (c)(1)(i) of this section.

(i) *Stock or securities of transferee foreign corporation.* The basis of the stock or securities, as applicable, of the transferee foreign corporation received by the U.S. transferor in the initial transfer shall be increased as of the date of the initial transfer by the amount of gain recognized.

(ii) *Transferred stock or securities.* The basis of the transferred stock or securities shall be increased as of the date of the initial transfer by the amount of the gain recognized.

(iii) *Other appropriate adjustments.* The basis of other stock, securities, or a partnership interest shall be increased, as appropriate, in accordance with the principles of this paragraph (c)(4). Under no circumstances shall the basis of stock, securities, or of a partnership interest held by a U.S. person that does not recognize gain under paragraph (c)(1)(i) of this section be increased under this paragraph (c)(4). In addition, under no circumstances shall the basis of any property be increased by the amount of any additional tax due or interest paid with respect to such tax, nor shall the basis of the assets of the transferred corporation be increased as a result of gain recognized by the U.S. transferor under paragraph (c)(1)(i) of this section.

(iv) *Cross-reference.* See paragraph (q)(2) of this section, *Examples 1, 2, 3,* and *5* for illustrations of the rules of this paragraph (c)(4). See also § 1.367(a)–1T(b)(4) for rules that determine the increase to basis of property resulting from the application of section 367(a).

(5) *Terms and conditions of a new gain recognition agreement*—(i) *General rule.* A new gain recognition agreement entered into pursuant to this section shall replace the existing gain recognition agreement, which shall terminate without further effect. The term of the new gain recognition agreement shall be the remaining term of the existing gain recognition agreement. The amount of gain subject to the new gain recognition agreement shall equal the amount of gain subject to the existing gain recognition agreement, reduced by any gain recognized under paragraph (c)(1)(i) of this section with respect to the existing gain recognition agreement by reason of the gain recognition event that gives rise to the new gain recognition agreement. The new gain recognition agreement shall, as applicable, be subject to the conditions and requirements of this section to the same extent as the existing gain recognition agreement. For example, a triggering event with respect to the new gain recognition agreement will generally include a disposition of the transferred stock or securities or of substantially all the assets of the transferred corporation. If, however, the transferred stock is canceled or redeemed pursuant to the disposition or other event that gives rise to the new gain recognition agreement (for example, pursuant to a liquidation where the transferee foreign corporation is the corporate distributee (within the meaning of section 334(b)(2)), or an

asset reorganization where the transferee foreign corporation is the acquiring corporation) the transferred stock is not subject to the new gain recognition agreement.

(ii) *Special rule for inclusion of gain.* If the U.S. transferor with respect to the new gain recognition agreement is not the U.S. transferor with respect to the existing gain recognition agreement, or a member of the consolidated group of which the U.S. transferor with respect to the existing gain recognition agreement was a member on the date of the initial transfer, then any gain recognized under paragraph (c)(1)(i) of this section with respect to the new gain recognition agreement must be included in income in the taxable year during which the gain recognition event occurs.

(d) *Filing requirements*—(1) *General rule.* A gain recognition agreement entered into with respect to an initial transfer must be included with the timely-filed return of the U.S. transferor for the taxable year during which the initial transfer occurs.

(2) *Special requirements*—(i) *New gain recognition agreement.* A new gain recognition agreement entered into under this section must be included with the timely-filed return of the U.S. transferor (as identified in the new gain recognition agreement) for the taxable year during which the disposition or event that requires the new gain recognition agreement occurs. If the new gain recognition agreement is entered into by the U.S. transferor that entered into the existing gain recognition agreement, the new gain recognition agreement is in lieu of the annual certification otherwise required for such taxable year under paragraph (g) of this section with respect to the existing gain recognition agreement.

(ii) *Multiple events within a taxable year.* Except as otherwise provided in this paragraph (d)(2)(ii), if the initial transfer and one or more dispositions or other events (even if a triggering event exception applies) that affect the gain recognition agreement entered into by the U.S. transferor with respect to the initial transfer occur within the same taxable year of such U.S. transferor, or if multiple dispositions or other events occur in a taxable year of the U.S. transferor that does not include the initial transfer, only one gain recognition agreement is required to be entered into and included with the timely-filed return of the U.S. transferor for such taxable year. The gain recognition agreement must describe the initial transfer and/or each disposition or other event that affects the gain recognition agreement (even if a triggering event exception applies). This paragraph does not apply, however, if any such disposition or other event requires a new gain recognition agreement to be entered into by a United States person other than the U.S. transferor with respect to the initial transfer or that entered into the existing gain recognition agreement, as applicable.

(3) *Common parent as agent for U.S. transferor.* If the U.S. transferor is a member but not the common parent of a consolidated group, the common parent of the consolidated group is the agent for the U.S. transferor under § 1.1502–77(a)(1). Thus, the common parent must file the gain recognition agreement on behalf of the U.S. transferor. References in this section to the timely-filed return of the U.S. transferor include the timely-filed return of the consolidated group of which the U.S. transferor is a member, as applicable.

(e) *Signatory*—(1) *General rule.* The gain recognition agreement must be signed under penalties of perjury by an agent of the U.S. transferor that is authorized to sign under a general or specific power of attorney, or by the appropriate party based on the category of the U.S. transferor described in this paragraph (e)(1).

(i) If the U.S. transferor is a corporation but not a member of a consolidated group, a responsible officer of the U.S. transferor. If the U.S. transferor is a member of a consolidated group, a responsible officer of the common parent of the consolidated group.

(ii) If the U.S. transferor is an individual, the individual.

(iii) If the U.S. transferor is a trust or estate, a trustee, executor, or equivalent fiduciary of the U.S. transferor.

(iv) In a bankruptcy case under Title 11, United States Code, a debtor in possession or trustee.

(2) *Signature requirement.* The inclusion of an unsigned copy of the gain recognition agreement with the timely-filed return of the U.S. transferor shall satisfy the signature requirement of paragraph (e)(1) of this section if the U.S. transferor retains the original signed gain recognition agreement in the manner specified by § 1.6001–1(e).

(f) *Extension of period of limitations on assessments of tax*—(1) *General rule.* In connection with the filing of a gain recognition agreement, the U.S. transferor must extend the period of limitations on assessments of tax with respect to the gain realized but not recognized on the initial transfer through the close of the eighth full taxable year following the taxable year during which the initial transfer occurs. The U.S. transferor extends the period of limitations by filing Form 8838 ''Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.'' The Form 8838 must be signed by a person authorized to sign the gain recognition agreement under paragraph (e)(1) of this section.

(2) *New gain recognition agreement.* If a new gain recognition agreement is entered into under this section, the U.S. transferor must extend the period of limitations on assessments of tax on the initial transfer through the close of the eighth full taxable year following the taxable year during which the initial transfer occurs, consistent with paragraph (f)(1) of this section, unless the U.S. transferor with respect to the new gain recognition agreement is the U.S. transferor with respect to the existing gain recognition agreement, or a member of the consolidated group of which the U.S. transferor with respect to the existing gain recognition agreement was a member on the date of the initial transfer.

(g) *Annual certification.* Except as provided in paragraph (d)(2)(i) of this section, the U.S. transferor must include with its timely-filed return for each of the five full taxable years following the taxable year of the initial transfer a certification (annual certification) that includes the information described in paragraphs (g)(1) through (3) of this section, as appropriate. The annual certification must be signed by a person authorized under paragraph (e)(1) of this section to sign the gain recognition agreement for the initial transfer. The inclusion of an unsigned copy of the annual certification with the relevant timely-filed return of the U.S. transferor shall satisfy the signature requirement of paragraph (e)(1) of this section provided the U.S. transferor retains the original signed certification in the manner specified by § 1.6001–1(e).

(1) A statement of whether a gain recognition event has or has not occurred during such taxable year. If a gain recognition event has occurred during such taxable year, the annual certification must state:

(i) The amount of gain subject to the gain recognition agreement at the time of the gain recognition event;

(ii) The amount of gain recognized under the gain recognition agreement by reason of the gain recognition event; and

(iii) A calculation of the reduction to the amount of gain subject to the gain recognition agreement by reason of the gain recognition event (for example, in the case of a gain recognition event described in paragraph (n)(2) of this section).

(2) A complete description of any event occurring during such taxable year that has terminated or reduced the amount of gain subject to the gain recognition agreement (for example, an event described in paragraph (o) of this section), including a calculation of any reduction to the amount of gain subject to the gain recognition agreement.

(3) A statement describing any disposition of assets of the transferred corporation during the taxable year not in the ordinary course of business.

(h) *Use of security.* The U.S. transferor may be required to furnish a bond or other security that satisfies the requirements of § 301.7101–1 if the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) determines that such security is necessary to ensure the payment of any tax on the gain realized, but not recognized, upon the initial transfer. Such bond or security generally will be required only if the transferred stock or securities are a principal asset of the U.S. transferor and the Director has reason to believe that a disposition of the stock or securities may be contemplated.

(i) [Reserved.]

(j) *Triggering events.* Except as provided in this section, if an event described in paragraphs (j)(1) through (10) of this section (triggering event) occurs during the GRA term, the U.S. transferor must recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section. This paragraph (j) generally requires the U.S. transferor to recognize gain (and pay applicable interest with respect to any additional tax due as provided in paragraph (c)(1)(v) of this section) under the gain recognition agreement to the extent the transferred stock or securities are disposed of, directly or indirectly. This paragraph (j) also requires the U.S. transferor to recognize gain under the gain recognition agreement in certain cases where it is not appropriate for the gain recognition agreement to continue. See paragraph (k) of this section for exceptions available for certain events that would otherwise constitute triggering events under this paragraph (j). See paragraph (o) of this section for certain events that terminate or reduce the amount of gain subject to a gain recognition agreement.

(1) *Disposition of transferred stock or securities.* A complete or partial disposition of the transferred stock or securities. See paragraph (q)(2) of this section, *Example 2* for an illustration of the rule of this paragraph (j)(1).

(2) *Disposition of substantially all of the assets of the transferred corporation*—(i) *General rule.* Except as provided in paragraph (j)(2)(ii) of this section, a disposition in one or more related transactions of substantially all of the assets of the transferred corporation (including stock or securities in a subsidiary corporation or a partnership interest). If the transferred corporation is domestic, see paragraph (o)(4) of this section.

(ii) *Exceptions.* For purposes of paragraph (j)(2)(i) of this section, the following dispositions shall be disregarded—

(A) Dispositions of property described in section 1221(a)(1) occurring in the ordinary course of business;

(B) An exchange of stock or securities described in section 354 that is pursuant to an asset reorganization; and

(C) An exchange of stock by a corporate distributee (as defined in section 334(b)(2)) pursuant to a complete liquidation to which section 332 applies.

(3) *Disposition of certain partnership interests.* If the initial transfer occurs by reason of the transfer of a partnership interest, a complete or partial disposition of such partnership interest. See section 367(a)(4) and § 1.367(a)–1T(c)(3)(ii).

(4) *Disposition of stock of the transferee foreign corporation.* A complete or partial disposition of the stock of the transferee foreign corporation received by the U.S. transferor in the initial transfer. For purposes of this section, an individual U.S. transferor that loses U.S. citizenship or ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated as disposing of all the stock of the transferee foreign corporation received in the initial transfer as of the date before the loss of such status.

(5) *Deconsolidation.* A U.S. transferor that is a member of a consolidated group ceases to be a member of the consolidated group, other than by reason of an acquisition of the assets of the U.S. transferor in a transaction to which section 381(a) applies, or by reason of the U.S. transferor joining another consolidated group as part of the same transaction.

(6) *Consolidation.* A U.S. transferor becomes a member of a consolidated group, including a U.S. transferor that is a member of a consolidated group and that becomes a member of another consolidated group.

(7) *Death of an individual; trust or estate ceases to exist.* A U.S. transferor that is an individual dies, or a U.S. transferor that is a trust or estate ceases to exist.

(8) *Failure to comply.* The U.S. transferor fails to comply in any material respect with any requirement of this section or with the terms of the gain recognition agreement, including failure to file an annual certification under paragraph (g) of this section. If a failure to include information in a gain recognition agreement as filed constitutes a failure to comply in a material respect, the U.S. transferor cannot avoid the application of this paragraph (j)(8) by subsequently making such information available. A material failure under this paragraph (j)(8) shall extend the period of limitations on assessments of tax until the close of the third full taxable year ending after the date on which the Director of Field Operations or Area Director receives actual notice of the failure to comply from the U.S. transferor.

(9) *Gain recognition agreement filed in connection with indirect stock transfers and certain triangular asset reorganizations.* With respect to a gain recognition agreement entered into in connection with an indirect stock transfer (as defined in § 1.367(a)–3(d)), or a triangular asset reorganization under § 1.367(a)–3(e)(2), an indirect disposition of the transferred stock or securities. For example, in the case of an indirect stock transfer described in § 1.367(a)–3(d)(1)(iii)(A), a complete or partial disposition of the stock of the acquiring corporation.

(10) *Gain recognition agreement filed pursuant to paragraph (k)(14) of this section.* In the case of a gain recognition agreement entered into pursuant to paragraph (k)(14) of this section, in addition to any disposition or other event described in paragraphs (j)(1) through (9) of this section,—

(i) Any disposition or other event identified as a triggering event in a new gain recognition agreement as required under paragraph (k)(14)(iii) of this section; and

(ii) Any disposition or other event that is inconsistent with the principles of paragraph (k) of this section including, for example, an indirect disposition of the transferred stock or securities.

(k) *Triggering event exceptions.* Notwithstanding paragraph (j) of this section, a disposition or other event described in paragraphs (k)(1) through (14) of this section shall not constitute a triggering event. This paragraph (k) generally provides exceptions for certain dispositions that constitute nonrecognition transactions but only if, immediately after the disposition, a U.S. transferor retains, as applicable, a direct

or indirect interest in the transferred stock or securities, or in the assets of the transferred corporation, and a new gain recognition agreement is entered into with respect to the initial transfer in accordance with this paragraph (k). Notwithstanding the application of this paragraph (k), if a gain recognition event described under paragraphs (m) and (n) of this section occurs during the GRA term the U.S. transferor may be required to recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section. See paragraph (o) of this section which provides that, notwithstanding paragraph (j) of this section, certain dispositions or other events shall instead terminate or reduce the amount of gain subject to a gain recognition agreement.

(1) *Transfers of stock of the transferee foreign corporation to a corporation or partnership.* A disposition of stock of the transferee foreign corporation received in the initial transfer pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B) that is not a triangular reorganization), 361 (but only in a divisive reorganization to which section 355 applies), or 721 applies, shall not constitute a triggering event if a new gain recognition agreement is entered into in accordance with paragraphs (k)(1)(i) through (iv) of this section, as applicable. In the case of an exchange to which section 354 applies that is pursuant to a triangular reorganization described in section 368(a)(1)(B), see paragraph (k)(14) of this section and paragraph (q)(2) of this section, *Example 4.*

(i) In the case of an exchange to which section 351 or 354 applies in which stock of a foreign acquiring corporation is received, the U.S. transferor includes with the new gain recognition agreement a statement that a complete or partial disposition of the stock of the foreign acquiring corporation received in the exchange shall constitute a triggering event. The principles of paragraph (o)(1)(i) or (ii), as appropriate, shall be applied to determine whether a subsequent complete or partial disposition of the stock of the foreign acquiring corporation received in the exchange shall instead terminate or reduce the amount of the new gain recognition agreement.

(ii) In the case of an exchange to which section 351 or 354 applies in which stock of a domestic acquiring corporation is received, the domestic acquiring corporation enters into the new gain recognition agreement, which must designate the domestic acquiring corporation as the U.S. transferor for purposes of this section. For an illustration of the rule provided by this paragraph (k)(1)(ii), see paragraph (q)(2) of this section, *Example 3.*

(iii) In the case of a section 361 exchange that is pursuant to a divisive reorganization to which section 355 applies and in which stock of a domestic corporation (domestic controlled corporation) is received, the domestic controlled corporation enters into the new gain recognition agreement, which must designate the domestic controlled corporation as the U.S. transferor for purposes of this section. For an illustration of the rule provided by this paragraph (k)(1)(iii), see paragraph (q)(2) of this section, *Example 11.*

(iv) In the case of an exchange to which section 721 applies, the U.S. transferor includes with the new gain recognition agreement a statement that a complete or partial disposition of the partnership interest received in the exchange shall constitute a triggering event for purposes of the new gain recognition agreement.

(2) *Complete liquidation of U.S. transferor under sections 332 and 337.* A distribution by the U.S. transferor of the stock of the transferee foreign corporation received in the initial transfer to which section 337 applies, that is pursuant to a complete liquidation under section 332, shall not constitute a triggering event if the corporate distributee (as defined in section 334(b)(2)) is a domestic corporation (domestic corporate distributee) and the domestic corporate distributee enters into a new gain recognition agreement. The new gain recognition agreement must designate the domestic corporate distributee as the U.S. transferor for purposes of this section.

(3) *Transfers of transferred stock or securities to a corporation or partnership.* A disposition of the transferred stock or securities pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B)), or 721 applies, shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement that provides that the dispositions described in paragraphs (k)(3)(i) and (ii) of this section shall constitute triggering events for purposes of the new gain recognition.

(i) A complete or partial disposition of the stock, securities, or partnership interest (as applicable) received in exchange for the transferred stock or securities.

(ii) Any other event that is inconsistent with the principles of this paragraph (k), including the indirect disposition of the transferred stock or securities.

(4) *Transfers of substantially all of the assets of the transferred corporation.* A disposition of substantially all of the assets of the transferred corporation pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B)), or 721 applies, shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement that provides that a complete or partial disposition of the stock, securities, or partnership interest (as applicable) received in exchange for the assets shall constitute a triggering event for purposes of the new gain recognition agreement.

(5) *Recapitalizations and section 1036 exchanges.* A complete or partial disposition of the transferred stock or securities, or of the stock of the transferee foreign corporation received in the initial transfer, pursuant to a reorganization described under section 368(a)(1)(E), or pursuant to a transaction to which section 1036 applies, shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement.

(6) *Certain asset reorganizations*—(i) *Stock of transferee foreign corporation.* If stock of the transferee foreign corporation received in the initial transfer is transferred to a domestic acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the domestic acquiring corporation enters into a new gain recognition agreement that designates the domestic acquiring corporation as the U.S. transferor for purposes of this section. For an illustration of the rule provided by this paragraph (k)(6), see paragraph (q)(2) of this section, *Example 5.* If the acquiring corporation is foreign, see paragraph (k)(14) of this section and paragraph (q)(2) of this section, *Example 6.*

(ii) *Transferred stock or securities.* If the transferred stock or securities are transferred to a foreign acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement that designates the foreign acquiring corporation as the transferee foreign corporation for purposes of this section. For an illustration of the rule provided by this paragraph, see paragraph (q)(2)

of this section, *Example 7.* If the transfer is to a domestic acquiring corporation, or is pursuant to a triangular asset reorganization, see paragraph (k)(14) or (o)(5) of this section.

(iii) *Assets of transferred corporation.* If substantially all of the assets of the transferred corporation are transferred to a foreign or domestic acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement that, unless the acquiring corporation is the transferee foreign corporation, designates the acquiring corporation as the transferred corporation for purposes of this section. Only the assets of the transferred corporation received by the acquiring corporation shall be treated as assets of the transferred corporation for purposes of this section (for example, only such assets will be taken into account for purposes of paragraph (j)(2) of this section). For an illustration of the rule provided by this paragraph, see paragraph (q)(2) of this section, *Example 8.* If the transferred corporation is domestic, see section 367(a)(1) and (a)(5), and paragraph (o)(4) of this section. If the transfer is pursuant to a triangular asset reorganization, see paragraph (k)(14) of this section.

(7) *Certain triangular reorganizations*—(i) *Transferee foreign corporation.* If substantially all of the assets of the transferee foreign corporation are transferred to a foreign acquiring corporation in a section 361 exchange that is pursuant to a triangular asset reorganization, the exchanges made pursuant to the reorganization shall not constitute triggering events if a new gain recognition agreement is entered into in accordance with paragraphs (k)(7)(i)(A) through (C) of this section. If the acquiring corporation is domestic, see paragraph (k)(14) of this section. For rules that apply to gain recognition agreements entered into as a result of an indirect stock transfer, see § 1.367(a)–3(d)(2)(iv) and paragraph (j)(9) of this section.

(A) If P is foreign, the new gain recognition agreement designates P as the transferee foreign corporation and includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the S stock held by P as a triggering event.

(B) Except as provided in paragraph (k)(7)(i)(C) of this section, if P is domestic, P enters into the new gain recognition agreement that designates P as the U.S. transferor and S as the transferee foreign corporation.

(C) If the triangular asset reorganization is described in section 368(a)(1)(A) by reason of section 368(a)(2)(E) and the transferee foreign corporation is the merged corporation, the U.S. transferor enters into the new gain recognition agreement and designates the surviving corporation as the transferee foreign corporation.

(ii) *Transferred corporation.* If substantially all of the assets of the transferred corporation are transferred in a section 361 exchange pursuant to a triangular asset reorganization, the exchanges made pursuant to the reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement in accordance with paragraph (k)(7)(ii)(A) of this section and, as applicable, paragraph (k)(7)(ii)(B) or (C) of this section.

(A) The new gain recognition agreement includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the P stock received in the reorganization as a triggering event.

(B) If the triangular asset reorganization is described in section 368(a)(1)(C), or section 368(a)(1)(A) or (G) by reason of section 368(a)(2)(D), the new gain recognition agreement includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the S stock held by P as a triggering event.

(C) If the triangular asset reorganization is described in section 368(a)(1)(A) by reason of section 368(a)(2)(E) and the transferred corporation is the merged corporation, the new gain recognition agreement includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the stock of the surviving corporation as a triggering event.

(8) *Complete liquidation of transferred corporation.* A distribution of substantially all of the assets of the transferred corporation to which section 337 applies, and the related exchange of the transferred stock to which section 332 applies, shall not constitute triggering events, if the U.S. transferor enters into a new gain recognition agreement. If the transferred corporation is domestic, see § 1.367(e)–2 and paragraph (o)(4) of this section. See paragraph (q)(2) of this section, *Example 9* for an illustration of the rules provided in this paragraph (k)(8).

(9) *Death of U.S. transferor.* The death of a U.S. transferor shall not constitute a triggering event if the person winding up the affairs of the U.S. transferor—

(i) Retains sufficient assets of the U.S. transferor to satisfy any possible Federal tax liability of the U.S. transferor under the gain recognition agreement for the duration of the extended period of limitations on assessments of tax on the gain realized but not recognized in the initial transfer;

(ii) Provides security as required under paragraph (h) of this section for any possible Federal tax liability of the U.S. transferor under the gain recognition agreement; or

(iii) Obtains a ruling from the Internal Revenue Service providing for one or more successors to the U.S. transferor under the gain recognition agreement.

(10) *Deconsolidation.* A deconsolidation of the U.S. transferor shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement.

(11) *Consolidation.* A consolidation of the U.S. transferor shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement. See paragraph (d)(3) of this section.

(12) *Intercompany transactions*—(i) *General rule.* If, pursuant to an intercompany transaction, the U.S. transferor disposes of stock of the transferee foreign corporation received in the initial transfer, this paragraph (k)(12) applies to such disposition to the extent the intercompany transaction creates an intercompany item that is not taken into account in the taxable year during which the intercompany transaction occurs. To the extent this paragraph (k)(12) applies, the disposition shall not constitute a triggering event, and the U.S. transferor shall remain subject to the gain recognition agreement if the conditions of paragraphs (k)(12)(i)(A) and (B) of this section are satisfied. To the extent the intercompany transaction does not create an intercompany item see, for example, paragraph (k)(1) and paragraph (q)(2) of this section, *Example 20.* See paragraph (o)(6) of this section for the effect on a gain recognition agreement when an intercompany item from an intercompany transaction to which this paragraph (k)(12)(i) applies is taken into account.

(A) At the time of the disposition, the basis of the stock of the transferee foreign corporation received in the initial transfer that is disposed of in the intercompany transaction is not greater than the sum of the amounts described in paragraphs (k)(12)(i)(A)(*1*) through (*3*) of this section. If only a portion of the stock of the transferee foreign corporation received in the initial transfer is disposed of, then the basis of such stock shall be compared with a proportionate amount (measured by value as determined at the time of the

disposition) of the amounts described in paragraph (k)(12)(i)(A)(*1*) through (*3*) of this section. To satisfy the basis condition of this paragraph (k)(12)(i)(A), the U.S. transferor may reduce the basis of the stock of the transferee foreign corporation received in the initial transfer that is disposed of in the intercompany transaction in accordance with the principles of paragraph (o)(1)(iii) of this section.

(*1*) The aggregate basis of the transferred stock or securities at the time of the initial transfer;

(*2*) The amount of any increase to the basis of the transferred stock or securities by reason of gain recognized by the U.S. transferor on the initial transfer; and

(*3*) The amount of any increase to the basis of the stock disposed of by reason of an income inclusion by the U.S. transferor with respect to such stock (for example, pursuant to section 961(a)).

(B) The annual certification filed with respect to the existing gain recognition agreement for the taxable year during which the intercompany transaction occurs includes a complete description of the intercompany transaction and a schedule illustrating how the basis condition of paragraph (k)(12)(i)(A) of this section is satisfied.

(ii) *Certain dispositions following intercompany transaction.* A subsequent disposition of stock of the transferee foreign corporation that is transferred in an intercompany transaction to which the exception provided by paragraph (k)(12)(i) of this section applies shall not constitute a triggering event if—

(A) The stock is transferred to a member of the consolidated group that includes the U.S. transferor immediately after the disposition, and

(B) The annual certification filed with respect to the existing gain recognition agreement for the taxable year during which the subsequent disposition occurs includes a complete description of the disposition.

(13) *Deemed asset sales pursuant to section 338(g) elections.* A deemed sale of the assets of the transferred corporation or the transferee foreign corporation as a result of an election under section 338(g) shall not constitute a triggering event. This paragraph does not apply to the sale of the stock of the target corporation (within the meaning of section 338(d)(2)) with respect to which such election is made.

(14) *Other dispositions or events.* A disposition or other event that would constitute a triggering event, without regard to this paragraph (k)(14), shall not constitute a triggering event if the conditions of paragraph (k)(14)(i) through (iii) of this section, as applicable, are satisfied. See paragraph (q)(2), *Examples 4, 6, 10, 12, 17, 21,* and *23* of this section for illustrations of the rules provided by this paragraph (k)(14).

(i) The disposition qualifies as a nonrecognition transaction.

(ii) Immediately after the disposition or other event, a U.S. transferor retains a direct or indirect interest in the transferred stock or securities or, as applicable, in substantially all of the assets of the transferred corporation (for example, in a case where the transferred corporation has been liquidated pursuant to section 332). If, as a result of the disposition or other event, a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all the assets of the transferred corporation, the condition of this paragraph (k)(14)(ii) shall be satisfied only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total value of the outstanding stock of such foreign corporation.

(iii) A new gain recognition agreement is entered into by the U.S. transferor described in paragraph (k)(14)(ii) of this section that includes—

(A) An explanation of why this paragraph (k)(14) applies to the disposition or other event; and

(B) A description of each subsequent disposition or other event that would constitute a triggering event, other than those described in paragraph (j) of this section, with respect to the new gain recognition agreement based on the principles of paragraphs (j) and (k) of this section including, for example, an indirect disposition of the transferred stock or securities.

(l) [Reserved.]

(m) *Receipt of boot in nonrecognition transactions*—(1) *Dispositions of transferred stock or securities.* Notwithstanding paragraph (k) of this section, if gain is required to be recognized (not including any gain that would be treated as a dividend under section 356(a)(2)) in connection with a disposition of the transferred stock or securities to which an exception under paragraph (k) of this section otherwise applies (triggering event exception), the U.S. transferor shall recognize gain under paragraph (c)(1)(i) of this section equal to the amount of gain required to be recognized in connection with the disposition, but not in excess of the amount of gain subject to the gain recognition agreement. For purposes of this paragraph (m)(1), the amount of gain required to be recognized in connection with the disposition shall be determined before taking into account any increase to the basis of the transferred stock or securities under paragraph (c)(4)(ii) of this section. See paragraph (q)(2) of this section, *Example 13*, for an illustration of the rule provided by this paragraph (m)(1).

(2) *Dispositions of assets of transferred corporation.* If gain is required to be recognized (not including any gain that would be treated as a dividend under section 356(a)(2)) in connection with a disposition of substantially all of the assets of the transferred corporation to which a triggering event exception otherwise applies, the U.S. transferor shall recognize gain under paragraph (c)(1)(i) of this section equal to the amount of gain required to be recognized in connection with the disposition, but not in excess of the amount of gain subject to the gain recognition agreement.

(n) *Special rules for distributions with respect to stock*—(1) *Certain dividend equivalent redemptions treated as dispositions.* A redemption of the transferred stock or of stock of the transferee foreign corporation received in the initial transfer that is treated by reason of section 302(d) as a distribution of property to which section 301 applies shall constitute a disposition for purposes of this section unless the U.S. transferor enters into a new gain recognition agreement that includes appropriate provisions to account for the redemption. For an illustration of the rule of this paragraph (n)(1), see paragraph (q)(2) of this section, *Example 14.*

(2) *Gain recognized under section 301(c)(3).* If gain is required to be recognized under section 301(c)(3) with respect to the transferred stock, the U.S. transferor shall recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section in an amount equal to the gain required to be recognized under section 301(c)(3), but not in excess of the amount of gain subject to the gain recognition agreement. For this purpose, the amount of gain required to be recognized under section 301(c)(3) shall be determined before taking into account any increase in the basis of the transferred stock under paragraph (c)(4)(ii) of this section.

(o) *Dispositions or other events that terminate or reduce the amount of gain subject to the gain recognition agreement.* Notwithstanding paragraph (j) of this section, the following dispositions or other events shall not constitute triggering events but instead shall terminate or reduce the amount of gain subject to the gain recognition agreement.

(1) *Taxable disposition of stock of the transferee foreign corporation*—(i) *Complete disposition.* Except as otherwise provided in this paragraph (o)(1)(i), if the U.S. transferor disposes of all the stock of the transferee foreign corporation received in the initial transfer in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, the gain recognition agreement shall terminate without further effect if, at the time of the disposition, the aggregate basis of such stock is not greater than the sum of the amounts described in paragraphs (o)(1)(i)(A) through (C) of this section. This paragraph shall not apply to a disposition of stock of the transferee foreign corporation pursuant to an intercompany transaction to which paragraph (k)(12) of this section applies. This paragraph shall also not apply to an individual U.S. transferor that loses U.S. citizenship or ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(A) The aggregate basis of the transferred stock or securities at the time of the initial transfer;

(B) The amount of any increase to the basis of the transferred stock or securities by reason of gain recognized by the U.S. transferor on the initial transfer; and

(C) The amount of any increase to the basis of the stock disposed of by reason of an income inclusion by the U.S. transferor with respect to such stock (for example, pursuant to section 961(a)).

(ii) *Partial dispositions.* A partial disposition by the U.S. transferor of the stock of the transferee foreign corporation received in the initial transfer in a transaction otherwise described in paragraph (o)(1)(i) of this section shall reduce the amount of gain subject to the gain recognition agreement based on the relative fair market value of the stock disposed of (measured at the time of the disposition) compared to the fair market value of all of the stock of the transferee foreign corporation received in the initial transfer (measured at the time of the disposition). For determining whether the basis condition of paragraph (o)(1)(i) of this section is satisfied in the case of a partial disposition, the aggregate basis of the stock disposed of is compared to a proportionate amount (based on fair market value, as measured at the time of the partial disposition) of the amounts described in paragraphs (o)(1)(i)(A) through (C) of this section. For an illustration of the rules of this paragraph (o)(1)(ii), see paragraph (q)(2), *Example 15,* of this section.

(iii) *Reduction of stock basis.* For purposes of satisfying the basis condition of paragraph (o)(1)(i) or (ii) of this section, the U.S. transferor may reduce the aggregate basis of the stock of the transferee foreign corporation received in the initial transfer, effective immediately before the disposition. For an illustration of the rules of this paragraph (o)(1)(iii), see paragraph (q)(2), *Example 16,* of this section. The U.S. transferor reduces the basis of the stock of the transferee foreign corporation by including a statement with the timely-filed return of the U.S. transferor for the taxable year in which the disposition occurs, entitled ''Election to Reduce Stock Basis Under § 1.367(a)–8(o)(1)(iii)'' and that includes—

(A) A description, including the date, of the disposition;

(B) A description of the stock of the transferee foreign corporation disposed of and the basis adjustments made under this paragraph (o)(1)(iii); and

(C) The fair market value of all the stock of the transferee foreign corporation held by the U.S. transferor at the time of the disposition.

(2) *Gain recognized in connection with certain nonrecognition transactions.* If the U.S. transferor recognizes gain in connection with a complete or partial disposition of stock of the transferee foreign corporation received in the initial transfer that is described in paragraph (k) of this section, and the basis condition of paragraph (o)(1)(i) or (ii) of this section, as applicable, is satisfied with the respect to such disposition, the amount of gain subject to the new gain recognition agreement filed under paragraph (k) of this section as a result of such disposition shall equal the amount of gain subject to the existing gain recognition agreement reduced by the amount of gain recognized by the U.S. transferor on the disposition. If the U.S. transferor recognizes gain in connection with a complete or partial disposition of the stock of the transferee foreign corporation received in the initial transfer that is described in paragraph (k) of this section, and the condition of paragraph (o)(1)(i) or (ii) of this section, as applicable, is satisfied with the respect to the disposition, but a new gain recognition agreement is not filed with respect to such disposition so that a triggering event exception does not apply to the disposition, the amount of gain required to be recognized by the U.S. transferor under the existing gain recognition agreement shall be reduced by the amount of the gain recognized on the disposition.

(3) *Gain recognized under section 301(c)(3).* If the U.S. transferor recognizes gain under section 301(c)(3) with respect to the stock of the transferee foreign corporation received in the initial transfer, the amount of gain subject to the gain recognition agreement shall be reduced by the amount of such recognized gain.

(4) *Dispositions of substantially all of the assets of a domestic transferred corporation.* Except as otherwise provided in this paragraph (o)(4), the gain recognition agreement shall terminate without further effect if substantially all of the assets of the transferred corporation are disposed of in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, but only if, at the time of the initial transfer, the U.S. transferor owned stock in the transferred corporation satisfying the requirements of section 1504(a)(2) and the U.S. transferor and the transferred corporation were members of the same consolidated group. If the initial transfer was part of an indirect stock transfer, the gain recognition agreement shall terminate without further effect if substantially all of the assets of the transferred corporation (taking into account § 1.367(a)–3(d)(2)(v)) are disposed of in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, but only if at the time of the initial transfer the U.S. transferor owned stock in the transferred corporation satisfying the requirements of section 1504(a)(2) (for example, in the case of a reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(E)) and the U.S. transferor and the transferred corporation were members of the same consolidated group.

(5) *Certain distributions or transfers of transferred stock or securities to U.S. persons.* To the extent a distribution or transfer of the transferred stock or securities satisfies the conditions of paragraphs (o)(5)(i) through (iii) of this section, the gain recognition agreement shall terminate without further effect, or the amount of gain subject to the gain recognition agreement shall be reduced, as appropriate.

(i) *Distributions or transfers described in section 337, 355, or 361.* The transferred stock or securities are distributed or transferred pursuant to a transaction described in paragraph (o)(5)(i)(A) through (D) of this section, as appropriate.

(A) A distribution described in section 337 that is pursuant to a complete liquidation described in

section 332. See paragraph (q)(2) of this section, *Example 18,* for an illustration of the rule provided by this paragraph (o)(5)(i)(A).

(B) A distribution to which section 355 applies. See paragraph (q)(2) of this section, *Example 19,* for an illustration of the rule provided by this paragraph (o)(5)(i)(B).

(C) A section 361 exchange that is pursuant to an asset reorganization. See paragraph (q)(2) of this section, *Example 22,* for an illustration of the rule provided by this paragraph (o)(5)(i)(C).

(D) A distribution to which section 361(c) applies that is pursuant to an asset reorganization. See paragraph (q)(2) of this section, *Example 22,* for an illustration of the rule provided by this paragraph (o)(5)(i)(D).

(ii) *Qualified recipient.* The recipient of the transferred stock or securities in the relevant transaction described in paragraph (o)(5)(i) of this section (qualified recipient) is—

(A) The U.S. transferor;

(B) A member of the consolidated group that includes the U.S. transferor immediately after the transaction; or

(C) An individual that is a United States person.

(iii) *Basis requirement*—(A) *General rule.* Immediately after the relevant transaction described in paragraph (o)(5)(i) of this section, the aggregate basis of the transferred stock or securities received by the qualified recipient is not greater than the aggregate basis of such stock or securities at the time of the initial transfer (as adjusted for gain recognized by the U.S. transferor on the initial transfer attributable to such stock or securities). For this purpose, the basis of the transferred stock in the hands of the qualified recipient shall be determined without regard to any basis attributable to income inclusions with respect to the stock (for example, under section 961(a)). In the case of a distribution to which section 355 applies, any adjustments to basis under § 1.367(b)–5(c) shall be made before determining whether the basis condition of this paragraph is satisfied.

(B) *Election to reduce basis in transferred stock or securities.* If the basis condition of paragraph (o)(5)(iii)(A) of this section is not satisfied, each qualified recipient may reduce the basis of the transferred stock or securities received in the transaction to the extent necessary to satisfy the basis condition. A qualified recipient reduces the basis of the transferred stock or securities by including a statement with its timely-filed return for the taxable year during which the distribution or transfer occurs entitled ''Election to Reduce Stock Basis Under § 1.367(a)–8(o)(5)(iii)(B)'' and that includes—

(*1*) A complete description and the date of the distribution or transfer;

(*2*) The fair market value of the transferred stock or securities received by the qualified recipient in the transaction; and

(*3*) The basis of the transferred stock or securities received by the qualified recipient immediately before and after the basis reduction.

(6) *Dispositions or other event following certain intercompany transactions.* If, subsequent to an intercompany transaction to which paragraph (k)(12) of this section applies, a disposition or other event occurs that requires the U.S. transferor to take into account the intercompany item related to the intercompany transaction (under the provisions of § 1.1502–13), the gain recognition agreement shall terminate without further effect or the amount of gain subject to the gain recognition agreement shall be reduced based on the principles of paragraph (o)(1)(i) or (ii) of this section, as appropriate. For an illustration of the rules of this paragraph (o)(6), see paragraph (q)(2) of this section, *Example 20.*

(7) *Expropriations under foreign law.* The amount of gain subject to the gain recognition agreement shall be reduced to the extent the stock or securities of the transferee foreign corporation received in the initial transfer, the transferred stock or securities, or substantially all the assets of the transferred corporation, are expropriated, seized, or subjected to a similar taking of such property by the government of a foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. Principles similar to those of paragraph (o)(1)(i) or (o)(1)(ii) of this paragraph, as relevant, shall be applied to determine the amount of the reduction.

(p) *Relief for reasonable cause for failure to comply*—(1) *Request for relief.* A U.S. transferor that fails to file timely a gain recognition agreement, waiver of period of limitations on assessments of tax, annual certification, or other information required under this section shall be considered to have satisfied the timeliness requirement with respect to such filing, and a failure to comply in any material respect with any requirement of this section or with the terms of the gain recognition agreement that would otherwise constitute a triggering event shall not constitute a triggering event, if a request for relief is filed as provided under paragraph (p)(2) of this section and the U.S. transferor is able to demonstrate to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the tax return of the U.S. transferor for the taxable year to which the failure relates, that such failure was due to reasonable cause and not willful neglect. Whether the failure was due to reasonable cause and not willful neglect will be determined by the Director after considering all the facts and circumstances. The Director shall notify the U.S. transferor in writing within 120 days if it is determined that the failure was not due to reasonable cause, or if additional time will be needed to make a determination. For this purpose, the 120-day period shall begin on the date the Internal Revenue Service notifies the U.S. transferor in writing that the request for reasonable cause relief has been received and assigned for review. If the U.S. transferor is not again notified before the close of the 120-day period, the U.S. transferor shall be deemed to have established that the failure to file timely or comply was due to reasonable cause and not willful neglect.

(2) *Procedures for filing requests for relief*—(i) *Time of submission.* Requests for relief under paragraph (p)(1) of this section shall be considered only if, as soon as the U.S. transferor becomes aware of the failure to file timely or comply in any material respect with any requirement of this section, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or otherwise complies with the rules of this section and that includes a written statement explaining the reasons for the failure to file timely or comply. The amended return must be filed with the applicable Internal Revenue Service Center with which the U.S. transferor filed its original return for such taxable year.

(ii) *Notice requirement.* In addition to the requirement of paragraph (p)(2)(i) of this section, the U.S. transferor must comply with the requirements of paragraph (p)(2)(ii)(A) or (B) of this section, as applicable.

(A) If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination.

(B) If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of

the amended return and any information required to be included with such return must be delivered to the Director having jurisdiction over the return.

(q) *Examples*—(1) *Presumed facts and references.* For purposes of the examples in paragraph (q)(2) of this section, and except where otherwise indicated, the following is presumed.

(i) UST, USP, and DC are domestic corporations that each use a calendar taxable year.

(ii) USP wholly owns UST and is the common parent of the consolidated group of which UST is a member.

(iii) TFC, TFD, F1, and FA are foreign corporations.

(iv) UST wholly owns TFD.

(v) In a section 351 exchange, UST transfers all of the stock of TFD (TFD stock) to TFC in exchange solely for stock of TFC (the initial transfer).

(vi) Pursuant to § 1.367(a)–3(b)(1)(ii) and this section, UST enters into a gain recognition agreement in connection with the initial transfer and makes the election described under paragraph (c)(2)(vi) of this section with respect to the gain recognition agreement.

(vii) As applicable, the section 1248 amount (within the meaning of § 1.367(b)–2(c)) or all earnings and profits amount (within the meaning of § 1.367(b)–2(d)) attributable to the stock of a foreign corporation is zero.

(viii) All transactions are respected under general principles of tax law, including the step transaction doctrine.

(ix) References to a U.S. transferor entering into a gain recognition agreement mean, where applicable, that the common parent of the consolidated group of which the U.S. transferor is a member has filed the gain recognition agreement on behalf of the U.S. transferor in accordance with paragraph (d)(3) of this section.

(x) Taxable years during the GRA term are referred to, for example, as year 1 and year 2.

(2) *Examples.* The following examples illustrate the application of the rules of this section.

Example 1. Basis adjustments from gain recognized under the gain recognition agreement. (i) *Facts.* TFC wholly owns F1. In year 3, pursuant to a section 351 exchange, TFC transfers all of the TFD stock to F1 in exchange solely for voting stock of F1. UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(3) of this section, and therefore the transfer by TFC of the TFD stock to F1 is not a triggering event. Under paragraph (c)(5)(i) of this section, the existing gain recognition agreement terminates without further effect. In year 4, in an exchange to which section 721 applies, UST contributes the TFC stock received in the initial transfer to PRS, a domestic partnership, in exchange for a partnership interest. UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(1) of this section, and therefore the transfer by UST of the TFC stock to PRS is not a triggering event. Under paragraph (c)(5)(i) of this section, the new gain recognition agreement filed by UST in year 3 terminates without further effect. In year 5, TFD disposes of substantially all of its assets in a transaction that constitutes a triggering event under paragraph (j)(2)(i) of this section. Under paragraph (c)(1)(i) of this section, UST recognizes the gain realized but not recognized on the initial transfer by reason of entering into the gain recognition agreement.

(ii) *Result.* Under paragraph (c)(4) of this section, the basis of the PRS interest held by UST, the TFC stock held by PRS that was received from UST in year 4, the F1 stock held by TFC that was received in exchange for the TFD stock in year 3, and the TFD stock held by F1 that was received from TFC in year 3 is increased by the amount of gain recognized by UST (but not by the additional tax or interest paid as result of such gain) with respect to the initial transfer under the gain recognition agreement. However, the basis of the assets of TFD (including the assets disposed of in year 5) is not increased as a result of the gain recognized by UST.

Example 2. Impact of gain recognition event on computation of income. (i) *Facts.* At the time of the initial transfer, the TFD stock has a $50x basis, a $100x fair market value, and a $30x section 1248 amount. The amount of gain subject to the gain recognition agreement is $50x. UST did not make an election under paragraph (c)(2)(vi) of this section with respect to the gain recognition agreement. In year 3, TFC disposes of the TFD stock received in the initial transfer in exchange for $120x cash.

(ii) *Result*—(A) *Gain recognition without an election.* The disposition by TFC of the TFD stock in year 3 is a triggering event under paragraph (j)(1) of this section. As a result, under paragraph (c)(1)(i) of this section, UST must recognize and include in income $50x gain under the gain recognition agreement. Under paragraph (c)(1)(iii)(A) of this section, UST must report the $50x gain on an amended return filed for the taxable year of the initial transfer. Under paragraph (c)(1)(v) of this section, UST must pay applicable interest on any additional tax due with respect to the $50x gain recognized. Under section 1248(a), $30x of the gain recognized by UST under the gain recognition agreement is recharacterized as a dividend. Under paragraph (c)(4) of this section, as of the date of the initial transfer, the basis of the TFC stock received by UST in the initial transfer and the TFD stock received by TFC in the initial transfer, respectively, is increased by $50x. After taking into account the increase to the basis of the TFD stock, TFC recognizes $20x gain on the disposition of the TFD stock in year 3.

(B) *Gain recognition with an election.* If UST made an election under paragraph (c)(2)(vi) of this section with the gain recognition agreement filed for the initial transfer, the result would be the same as in paragraph (ii)(A) of this *Example 2*, except that UST must include in income the $50x gain recognized under the gain recognition agreement on its tax return filed for year 3. Any additional tax due with respect to the $50x gain and applicable interest on the additional tax due must be included with such return. The amount, if any, of the $50x gain recognized by UST under the gain recognition agreement that is characterized as a dividend under section 1248(a) is determined in year 3.

Example 3. Transfer of stock of the transferee foreign corporation to a domestic corporation in a section 351 exchange. (i) *Facts.* UST wholly owns DC. In year 3, pursuant to a section 351 exchange, UST transfers all of the TFC stock received in the initial transfer to DC in an exchange solely for voting stock of DC.

(ii) *Result.* The year 3 transfer of the TFC stock by UST to DC constitutes a triggering event under paragraph (j)(4) of this section. However, the transfer shall not constitute a triggering event pursuant to paragraph (k)(1)(ii) of this section if DC enters into a new gain recognition agreement with respect to the initial transfer that designates DC as the U.S. transferor for purposes of this section. Pursuant to paragraphs (c)(4)(i) and (ii) of this section, if DC is required to recognize gain under the new gain recognition agreement, the basis of the stock of TFC and TFD would be increased by the amount of gain recognized. However, pursuant to paragraph (c)(4)(iii) of this section, no adjustment would be made to the basis of the DC voting stock received by UST in year 3 as a result of such gain recognition. Alternatively, if the conditions for the application of paragraph (k)(14) of this section are satisfied UST could instead enter into the new gain recognition agreement with respect to the initial transfer.

Example 4. Transfer of stock of the transferee foreign corporation in a triangular section 368(a)(1)(B) reorganization. (i) *Facts.* DC wholly owns FA. In year 3, pursuant to a triangular reorganization described in section 368(a)(1)(B), UST transfers all of the TFC stock received in the initial transfer to FA in exchange solely for 20% of the outstanding voting stock of DC. At the time of the reorganization, the TFC stock has a basis in excess of fair market value.

(ii) *Result.* (A) The transfer by UST of the TFC stock to FA is an indirect stock transfer under § 1.367(a)–3(d)(1)(iii)(B). Accordingly, to preserve nonrecognition treatment, UST must enter into a separate gain recognition agreement under this section with respect to such transfer.

(B) With respect to the gain recognition agreement filed for the initial transfer of the TFD stock, the transfer by UST of the TFC stock to FA is a triggering event under paragraph (j)(4) of this section. However, the transfer shall not constitute a triggering event if the conditions of the exception provided by paragraph (k)(14) of this section are satisfied.

(*1*) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer qualifies as a nonrecognition transaction (assuming UST enters into a gain recognition agreement as described in paragraph (ii)(A) of this *Example 4*).

(*2*) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer DC, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total fair market value of the outstanding stock of FA. As a result, DC is treated as retaining an indirect interest in the TFD stock immediately following the transfer.

(*3*) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that, based on the principles of paragraph (j) of this section, describes the subsequent dispositions or other events that would constitute triggering events for purposes of the new gain recognition agreement (other than the dispositions and other events described in paragraph (j) of this section). For example, a complete or partial disposition of the stock of FA would constitute a triggering event for purposes of the new gain recognition agreement.

Example 5. Transfer of stock of the transferee foreign corporation to a domestic corporation pursuant to an asset reorganization. (i) *Facts.* At the time of the initial transfer the TFD stock has a $50x basis and a $100x fair market value. Therefore, the amount of gain subject to the gain recognition agreement is $50x. In year 3, pursuant to an asset reorganization described in section 368(a)(1)(A), UST transfers its assets to DC in exchange solely for 20% of the outstanding stock of DC. UST distributes the stock of DC to USP pursuant to the plan of reorganization.

(ii) *Result.* The transfer by UST of the TFC stock to DC constitutes a triggering event under paragraph (j)(4) of this section. However, pursuant to paragraph (k)(6)(i) of this section, if DC enters into a new gain recognition agreement with respect to the initial transfer that designates DC as the U.S. transferor, the transfer shall not constitute a triggering event.

Example 6. Transfer of stock of the transferee foreign corporation to a foreign corporation pursuant to an asset reorganization. (i) *Facts.* The facts are the same as in Example 5, except the acquiring corporation in the asset reorganization is FA, and, at the time of the asset reorganization, the TFC stock transferred by UST to FA has a $50x basis and a $150x fair market value. All of the conditions under section 367(a)(5) and the regulations under that section are satisfied, and no adjustment is required to the basis of the FA stock received by USP in the transaction.

(ii) *Result.* (A) The transfer by UST of the TFC stock to FA is described in section 361(a) and is therefore subject to section 367(a)(5). In general, UST cannot file a gain recognition agreement with respect to such transfer, and the transfer therefore is subject to the general rule of section 367(a)(1). However, if the conditions of § 1.367(a)–3(e)(1)(i) through (iv) are satisfied, USP can enter into a gain recognition agreement with respect to the transfer to avoid the recognition of gain by UST on the transfer under section 367(a)(1). If the exception provided by paragraph (k)(14) of this section applies so that the transfer by UST of the TFC stock to FA is not a triggering event with respect to the gain recognition agreement filed for the initial transfer (discussed in paragraph (ii)(B) of this *Example 6*), the amount of gain subject to the gain recognition agreement (if entered into) with respect to the transfer by UST of the TFC stock to FA in the asset reorganization is $100x.

(B) Under paragraph (j)(4) of this section, the transfer of the TFC stock by UST to FA is a triggering event with respect to the gain recognition agreement for the initial transfer. The exception provided by paragraph (k)(6)(i) of this section does not apply to such transfer because FA, the acquiring corporation in the asset reorganization, is foreign. However, the transfer shall not constitute a triggering event if the conditions of the exception provided by paragraph (k)(14) of this section are satisfied.

(*1*) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer of the TFC stock to FA qualifies as a nonrecognition transaction (assuming USP enters into a gain recognition agreement with respect to such transfer).

(*2*) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer USP, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total fair market value of the outstanding stock of FA. As a result, USP is treated as retaining an indirect interest in the TFD stock immediately following the transfer.

(*3*) The condition of paragraph (k)(14)(iii) of this section is satisfied if USP enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that, based on the principles of paragraph (j) of this section, describes the subsequent dispositions or other events that would constitute triggering events for purposes of the new gain recognition agreement, other than those already provided in paragraph (j) of this section. For example, a disposition of the stock of FA would constitute such a triggering event for purposes of the new gain recognition agreement.

(iii) *Alternate facts.* Assume the same facts as in paragraph (i) of this *Example 6,* including that paragraph (k)(14) of this section applies to the year 3 reorganization so that USP enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that occurred in year 1 (GRA 1), and that under § 1.367(a)–3(e) USP enters into a separate gain recognition agreement with respect to the initial transfer of the TFC stock by UST to FA pursuant to the year 3 asset reorganization (GRA 2). Assume further that in year 4 TFC disposes of 10% of the TFD stock pursuant to a transaction that constitutes a triggering event with respect to GRA 1. The disposition of the TFD stock is not a triggering event with respect to GRA 2 because the TFD stock disposed of does not constitute substantially all the assets of TFC. Under paragraphs (j)(1) and (c)(1)(i) of this section, USP must recognize $5x gain (10% of $50x) under GRA 1. Under paragraph (c)(4)(i) and (ii) of this section, as of the date of the initial transfer (with respect to which GRA 1 was filed), the basis of the TFC stock and TFD stock, respectively, is increased by $5x. Under paragraph (c)(1)(i) of this section, the amount of gain subject to GRA 1 is reduced from $50x to $45x. Similarly, because the transferred stock for purposes of GRA 2 is the TFC stock, the amount of gain subject to GRA 2 is reduced from $100x to $95x to reflect the increase to the basis of the TFC stock.

Example 7. Transfer of transferred stock to a foreign corporation pursuant to an asset reorganization. (i) *Facts.* UST wholly owns FA. In year 4, pursuant to a reorganization described in section 368(a)(1)(D), TFC transfers all of the TFD stock to FA in exchange solely for stock of FA. TFC distributes the FA stock to UST pursuant to the plan of reorganization.

(ii) *Analysis.* In general, the year 4 transfer by TFC of the TFD stock to FA and the exchange by UST of the TFC stock for FA stock constitute triggering events under paragraphs (j)(1) and (4) of this section, respectively. However, under paragraph (k)(6)(ii) of this section, the transfers shall not constitute triggering events if UST enters into a new gain recognition agreement with respect to the initial transfer that designates FA as the transferee foreign corporation.

Example 8. Transfer of substantially all the assets of the transferred corporation pursuant to an asset reorganization. (i) *Facts.* In year 4, pursuant to an asset reorganization described in section 368(a)(1)(C), TFD transfers all of its assets to FA in exchange solely for voting stock of FA. TFD distributes the FA voting stock to TFC pursuant to the plan of reorganization.

(ii) *Analysis.* The year 4 transfer by TFD of all its assets to FA and the exchange by TFC of its TFD stock for FA voting stock pursuant to the reorganization constitute triggering events under paragraphs (j)(2) and (j)(1) of this section, respectively. However, under paragraph (k)(6)(iii) of this section, the transfers shall not constitute triggering events if UST enters into a new gain recognition agreement with respect to the initial transfer that designates FA as the transferred corporation. In addition, under paragraph (k)(6)(iii) of this section only the assets of TFD acquired by FA in the asset reorganization shall be treated as assets of the transferred corporation for purposes of the new gain recognition agreement.

Example 9. Complete liquidation of transferred corporation into transferee foreign corporation. (i) *Facts.* UST does not make an election under paragraph (c)(2)(vi) of this section in connection with the gain recognition agreement entered into with respect to the initial transfer. In year 3, TFD distributes all of its assets to TFC pursuant to a complete liquidation to which sections 332 and 337 apply. Under paragraph (k)(8) of this section, UST enters into a new gain recognition agreement with respect to the initial transfer such that the liquidation is not a triggering event. Under paragraph (c)(5)(i) of this section, the new gain recognition agreement is subject to the conditions and requirements of this section to the same extent as the existing gain recognition agreement, except that the transferred stock

is no longer subject to the gain recognition agreement because the transferred stock is cancelled by reason of the liquidation. In year 5 TFC disposes of substantially all of the assets received from TFD in the year 3 liquidation.

(ii) *Result.* The year 5 disposition by TFC of substantially all of the assets received from TFD in the year 3 liquidation is a triggering event under paragraph (j)(2) of this section, and therefore UST must recognize the gain subject to the gain recognition agreement. UST must report the gain recognized on an amended return for the taxable year during which the initial transfer occurred. UST must also pay applicable interest on any additional tax due with respect to the gain recognized. Under paragraph (c)(4)(i) of this section, the basis of the TFC stock received by UST in the initial transfer is increased as of the date of the initial transfer by the amount of gain recognized under the gain recognition agreement. The basis of the assets of TFD, however, is not increased.

Example 10. Transfer of transferred stock to foreign corporation in section 351 exchange, followed by a section 332 liquidation of the foreign corporation. (i) *Facts.* In year 3, pursuant to a section 351 exchange, TFC transfers the TFD stock to F1, a newly formed corporation, in exchange solely for voting stock of F1. The transfer by TFC of the TFD stock to F1 is not a triggering event because UST complies with the conditions of paragraph (k)(3) of this section. In year 5, F1 distributes all of its assets to TFC in a complete liquidation to which sections 332 and 337 apply.

(ii) *Result.* The distribution of the TFD stock by F1, and the exchange of F1 stock by TFC pursuant to the year 5 liquidation of F1 constitute triggering events under paragraphs (j)(1) and (k)(3)(i) of this section, respectively. However, if paragraph (k)(14) of this section applies, neither the distribution of the TFD stock by F1, nor the exchange by TFC of the F1 stock, shall constitute a triggering event.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution of the TFD stock, and the exchange of F1 stock, both qualify as nonrecognition transactions.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution UST, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the stock of TFC. As a result, UST is treated as retaining an indirect interest in the TFD stock following the complete liquidation of F1.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement. Because after the complete liquidation of F1, UST wholly owns TFC, which wholly owns TFD, as was the case immediately after the initial transfer, UST is not required to describe, with the new gain recognition agreement, other dispositions or events that would constitute triggering events based on the principles of paragraph (j) of this section, other than the dispositions or events described in paragraph (j) of this section.

Example 11. Disposition of stock of transferee foreign corporation pursuant to a divisive reorganization. (i) *Facts.* In year 3, pursuant to a divisive reorganization described in section 368(a)(1)(D), UST transfers all of the TFC stock to DC, a newly-formed corporation, in exchange solely for stock of DC. UST then distributes all of the DC stock to USP in a transaction to which section 355 applies.

(ii) *Result.* The transfer of the TFC stock by UST to DC constitutes a triggering event under paragraph (j)(4) of this section. However, under paragraph (k)(1)(iii) of this section, the transfer of the TFC stock shall not constitute a triggering event if DC enters into a new gain recognition agreement that designates DC as the U.S. transferor for purposes of this section.

(iii) *Alternate facts.* The facts are the same as in paragraph (i) of this *Example 11,* except that UST transfers only 90% of the TFC stock to DC. Paragraph (k)(1)(iii) of this section applies only with respect to the TFC stock transferred to DC. Thus, the conditions of paragraph (k)(1)(iii) of this section are satisfied if DC enters into a new gain recognition agreement with respect to the TFC stock received from UST. The amount of gain subject to the new gain recognition agreement entered into by DC equals 90% of the amount of gain subject to the gain recognition agreement entered into by UST with respect to the initial transfer. The amount of gain subject to the gain recognition agreement entered into by UST with respect to the initial transfer is reduced by the amount of gain subject to the new gain recognition agreement entered into by DC. The gain recognition agreement entered into by UST with respect to the initial transfer continues to apply to the remaining TFC stock held by UST.

Example 12. Disposition of transferred stock pursuant to a divisive reorganization. (i) *Facts.* In year 3, pursuant to a divisive reorganization described in section 368(a)(1)(D), TFC transfers all of the TFD stock to F1, a newly formed corporation, in exchange solely for all of the outstanding stock of F1. TFC then distributes all of the F1 stock to UST in a transaction to which section 355 applies.

(ii) *Result.* The transfer by TFC of the TFD stock to F1 constitutes a triggering event under paragraph (j)(1) of this section. However, if paragraph (k)(14) of this section applies, neither the transfer of the TFD stock by TFC to F1, nor the distribution of the F1 stock by TFC to UST, shall constitute triggering events.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the dispositions of the TFD stock and F1 stock qualify as nonrecognition transactions.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer UST, an eligible U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total fair market value of the outstanding stock of F1. As a result, UST is treated as retaining an indirect interest in the TFD stock following the dispositions.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement with respect to the initial transfer that describes the subsequent dispositions or other events that would constitute triggering events based on the principles of paragraph (j) of this section, other than those described in paragraph (j) of this section. For example, a complete or partial disposition of the F1 stock would constitute a triggering event for purposes of the new gain recognition agreement (subject to the exceptions provided by paragraph (k) of this section).

Example 13. Receipt of boot by the transferee foreign corporation in a subsequent section 351 exchange. (i) *Facts.* At the time of the initial transfer, the TFD stock has a $50x basis and $100x fair market value. The amount of gain subject to the gain recognition agreement is $50x. In year 3, TFC and X, an unrelated foreign corporation, form F1. TFC transfers the TFD stock to F1 in exchange for $35x cash and $65x stock of F1. At the time of the transfer, the TFD stock has a $50x basis and $100x fair market value. The F1 stock received by TFC represents 25% of the outstanding stock of F1. Without regard to the gain recognized under the gain recognition agreement and any adjustments to basis under paragraph (c)(4)(ii) of this section, under section 351(b) TFC would recognize $35x gain in connection with the transfer of the TFD stock to F1. UST complies with the conditions of paragraph (k)(3) of this section, and therefore the disposition by TFC of the TFD stock does not constitute a triggering event.

(ii) *Result.* Under paragraph (m)(1) of this section, UST must recognize $35x gain under the gain recognition agreement as a result of the year 3 disposition by TFC of the TFD stock. Thus, the amount of gain subject to the new gain recognition agreement entered into by UST pursuant to paragraph (k)(3) of this section is $15x. Under paragraph (c)(4)(ii) of this section, as of the date of the initial transfer, the basis of the TFD stock held by TFC is increased by $35x, the amount of the gain recognized by UST under the gain recognition agreement. Under paragraph (c)(4)(i) of this section, the basis of the TFC stock received by UST in the initial transfer is also increased by $35x. After taking into account the increase to the basis of the TFD stock under paragraph (c)(4)(ii) of this section, TFC recognizes $15x gain under section 351(b) in connection with the year 3 transfer of the TFD stock to F1. Under section 362(a), the basis of the TFD stock in the hands of F1 is $100x.

Example 14. Complete disposition of transferred stock pursuant to a section 304(a)(1) transaction. (i) *Facts.* UST wholly owns FA. In year 3, in a transaction to which section 304(a)(1) applies, TFC transfers all of the TFD stock to FA in exchange for cash. Under section 304(a)(1), TFC and FA are treated as if TFC transferred the TFD stock to FA in a section 351 exchange in exchange solely for FA stock, and then FA redeemed the FA stock deemed issued in exchange for the cash. Under section 302(d), the redemption of the FA stock deemed issued by FA to TFC under section 304(a)(1) is treated as a distribution to which section 301 applies.

(ii) *Result.* (A) In general, the deemed contribution by TFC of the TFD stock to FA

in the section 351 exchange is a triggering event under paragraph (j)(1) of this section. However, under paragraph (k)(3) of this section the deemed contribution shall not be a triggering event if UST enters into a new gain recognition agreement with respect to the initial transfer in which it agrees to treat as a triggering event a complete or partial disposition of the FA stock deemed received by TFC.

(B) Under paragraph (n)(1) of this section, the redemption of the FA stock deemed received by TFC in exchange for the TFD stock shall not constitute a disposition if UST enters into a new gain recognition agreement with respect to the initial transfer that includes appropriate provisions to take into account such redemption. Therefore, under the new gain recognition agreement UST must agree to treat as a triggering event a complete or partial disposition of the stock of FA. Pursuant to paragraph (d)(2)(ii) of this section, UST is permitted to enter into a single new gain recognition agreement in year 3, but the gain recognition agreement must provide a complete description of the section 304(a)(1) transaction including the deemed section 351 exchange and redemption of the FA stock.

Example 15. Reduction in amount of gain subject to gain recognition agreement, followed by triggering event. (i) *Facts.* In year 3, UST disposes of 60% of the TFC stock received in the initial transfer in a transaction in which the conditions of paragraph (o)(1)(ii) of this section are satisfied. Thus, the amount of gain subject to the gain recognition agreement is reduced by 60%. In year 5, TFC disposes of 50% of the TFD stock in a transaction that constitutes a triggering event.

(ii) *Result.* As a result of the year 5 disposition by TFC of 50% of the TFD stock, under paragraphs (j)(1) and (c)(1)(i) of this section, UST must recognize and include in income 50% of the gain subject to the gain recognition agreement (because of the year 3 disposition of TFC stock, the amount of gain subject to the gain recognition agreement equals 40% of the gain realized, but not recognized, on the initial transfer). UST must pay applicable interest on any additional tax due with respect to the gain recognized. The amount of gain subject to the gain recognition agreement is reduced by the amount of gain recognized by UST (the remaining gain equals 20% of the gain realized, but not recognized, by UST on the initial transfer).

Example 16. Taxable sale of stock of transferee foreign corporation and election to reduce stock basis. (i) *Facts.* UST wholly owns F1 and TFD. The F1 stock has a $100x basis and $90x fair market value, and the TFD stock has a $0x basis and $100x fair market value. UST also owns real property with a $10x basis and $10x fair market value. In year 1, pursuant to a section 351 exchange, UST transfers the real property, the TFD stock, and the F1 stock to TFC in exchange solely for 20 shares of TFC stock. UST enters into a gain recognition agreement with respect to the transfer of the TFD stock. The amount of the gain recognition agreement is $100x. UST takes the position that the basis of each share of TFC stock received in the exchange is $5.5x (a proportionate amount of the $110x aggregate basis of the transferred property). In year 3, UST disposes of all its TFC stock in a transaction in which all gain realized is recognized and included in taxable income.

(ii) *Result.* The year 3 disposition of the TFC stock is a triggering event under paragraph (j)(4) of this section. The disposition does not terminate the gain recognition agreement pursuant to paragraph (o)(1)(i) of this section because the basis of each share of TFC stock received in exchange for the TFD stock in the initial transfer is $5.5x, which exceeds the $0x basis of the TFD stock at time of the initial transfer. However, under paragraph (o)(1)(iii) of this section, to satisfy the basis condition of paragraph (o)(1)(i) of this section, UST can reduce the basis of the 10 shares of the TFC stock received in exchange for the TFD stock to $0x. If UST reduces the basis of the 10 shares of TFC stock to $0x, under paragraph (o)(1)(i) of this section the disposition of the TFC stock shall not constitute a triggering event but instead shall terminate the gain recognition agreement without further effect.

Example 17. Successive section 351 exchanges, section 301 distributions, and transactions involving partnerships. (i) *Facts.* UST owns a 40 percent capital and profits interest in a foreign partnership (PRS). PRS wholly owns TFD and other assets with basis equal to fair market value. The TFD stock has a $50x basis and $200x fair market value. TFC wholly owns F1. On day 1 of year 1, in a section 351 exchange, UST transfers its PRS interest to TFC in exchange solely for stock of TFC (initial transfer). On that same day, in a section 351 exchange, TFC transfers the PRS interest received from UST to F1 in exchange solely for stock of F1. In year 3, PRS receives a $150x distribution from TFD to which section 301 applies. Under section 301(c), $25x of the distribution constitutes a dividend, $50x is applied against and reduces the basis of the TFD stock held by PRS, and the remaining $75x is treated as gain from the sale or exchange of property. With respect to the TFD stock deemed transferred by UST in the initial transfer, under section 301(c), $10x (40% of $25x) of the distribution constitutes a dividend, $20x (40% of $50x) is applied against and reduces the basis of TFD stock, and $30x (40% of $75x) is treated as gain from the sale or exchange of property. In year 5, pursuant to a distribution to which section 731 applies, PRS distributes all of the TFD stock to F1.

(ii) *Result.* (A) *Successive section 351 transfers.* Under section 367(a)(4) and § 1.367(a)-1T(c)(3)(ii), the transfer of the PRS interest by UST to TFC is treated, for purposes of section 367(a), as a transfer by UST to TFC of its proportionate share of the TFD stock held by PRS (the initial transfer). The initial transfer by UST of the TFD stock to TFC is subject to the general rule of section 367(a)(1), unless UST enters into a gain recognition agreement with respect to such transfer pursuant to § 1.367(a)–3(b)(1)(ii) and this section. Under paragraph (c)(3)(viii) of this section, the gain recognition agreement must include a complete description of the transfer, including a description of the partners of PRS. Even if UST enters into a gain recognition agreement with respect to the initial transfer, under paragraph (j)(3) of this section, the subsequent transfer by TFC of the PRS interest to F1 is a triggering event unless UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(14) that provides that, in addition to the triggering events provided in paragraph (j) of this section, a complete or partial disposition of the F1 stock received by TFC in exchange for the PRS interest shall constitute a triggering event for purposes of the gain recognition agreement. The new gain recognition agreement must also provide that any other disposition that is inconsistent with the principles of paragraph (k), including an indirect disposition of the TFD stock or of substantially all of the assets of TFD, shall constitute a triggering event for purposes of the new gain recognition agreement. Under paragraph (d)(2)(ii) of this section, UST is permitted to enter into a single gain recognition agreement with respect to the initial transfer and the subsequent transfer by TFC of the PRS interest, but the agreement must include a complete description of the initial transfer and the subsequent transfer of the PRS interest.

(B) *Section 301 distribution from TFD to PRS.* Under paragraph (b)(1)(iii) of this section, the section 301 distribution received by PRS from TFD is not a disposition (and therefore does not affect the gain recognition agreement) to the extent it is described in section 301(c)(1) or (2). However, under paragraph (n)(2) of this section, to the extent the distribution is described in section 301(c)(3), UST must recognize gain ($30x) under the gain recognition agreement. For this purpose, the amount of the distribution that is described in section 301(c)(3) is determined before taking into account the increase to the basis of the TFD stock under paragraph (c)(4)(ii) of this section.

(C) *Distribution of TFD stock by PRS to F1.* The year 5 distribution of the TFD stock by PRS to F1 is a triggering event under paragraph (j)(1) of this section, unless paragraph (k)(14) of this section applies.

(*1*) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution qualifies as a nonrecognition transaction.

(*2*) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution UST, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total value of the outstanding stock of F1. As a result, UST is treated as retaining an indirect interest in the TFD stock following the distribution.

(*3*) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement with respect to the initial transfer. The new gain recognition agreement need not describe additional dispositions or other events that would constitute triggering events because, pursuant to paragraph (c)(5) of this section, the dispositions or other events described in paragraph (j) of this section or in the existing gain recognition agreement apply to the new gain recognition agreement.

Example 18. Complete liquidation of transferee foreign corporation. (i) *Facts.* TFD has 10 shares of stock outstanding immediately before the initial transfer. On the date of the initial transfer, the TFD stock has a $0x basis and $90x fair market value. In year 2, in exchange for 1 share of TFD stock TFC transfers real estate to TFD with a $10x basis and $10x fair market value. In year 4, TFC distributes the 11 shares of TFD stock to UST in a complete liquidation to which sections 332 and 337 apply.

(ii) *Result.* In determining whether the gain recognition agreement entered into by UST with respect to the initial transfer is terminated under paragraph (o)(5) of this section, or triggered under paragraphs (j)(1) and (j)(4) of this section, only the 10 shares of TFD stock transferred by UST in the initial transfer are considered. Thus, the 1 share of TFD stock received by TFC in exchange for the real estate in year 2 is not taken into account.

Example 19. Spin-off of transferred corporation. (i) *Facts.* Before the initial transfer, the TFD stock has an $80x basis and a $100x fair market value, and the TFC stock has a $100x basis and a $100x fair market value. In year 4, TFC distributes all of the TFD stock to UST in a transaction to which section 355 applies. At the time of the distribution, the TFD stock has a $200x fair market value, and the TFC stock (without regard to the value of the TFD stock held by TFC) has a $100x fair market value. At such time, the TFC stock has a $180x basis. As determined under section 358, immediately after the distribution, the TFC stock has a $60x basis, and the TFD stock has a $120x basis.

(ii) *Result.* The distribution of the TFD stock by TFC in year 4 is a triggering event under paragraph (j)(1) of this section. The distribution does not terminate the gain recognition agreement under paragraph (o)(5) of this section because after the distribution, the basis of the TFD stock in the hands of UST ($120x) is greater than the basis of the TFD stock at the time of the initial transfer ($80x). However, if UST reduces the basis of the TFD stock to $80x (as provided under paragraph (o)(5)(iii) of this section) the gain recognition agreement will terminate without further effect. If UST does not elect to reduce the basis of the TFD stock, see paragraph (k)(14) of this section.

Example 20. Intercompany transaction followed by disposition to nonmember. (i) *Facts.* At the time of the initial transfer, the TFD stock has a $50x basis and $100x fair market value. The amount of the gain recognition agreement is $50x. In year 3, UST distributes all of the TFC stock to USP in a transaction to which section 301 applies. At the time of the distribution, the TFC stock has a $50x basis and $90x fair market value. Under section 311(b), UST must recognize $40x gain (the intercompany item) on the distribution, but because the distribution is an intercompany transaction, under the provisions of § 1.1502–13, the $40x gain is not taken into account in year 3. In year 4, USP sells all of the TFC stock to X, an unrelated corporation. Under the provisions of § 1.1502–13, in year 4 UST takes into account the $40x intercompany item as a result of the sale of the TFC stock to X.

(ii) *Result.* (A) The year 3 distribution of the TFC stock by UST to USP does not terminate the gain recognition agreement under paragraph (o)(1) of this section because UST does not include the $40x gain in taxable income during year 3. Under paragraph (j)(4) of this section, the year 3 distribution of the TFC stock by UST to USP is generally a triggering event; however, because the distribution is an intercompany transaction that creates an intercompany item, the distribution shall not constitute a triggering event if the conditions of paragraph (k)(12)(i) of this section are satisfied.

(1) The condition of paragraph (k)(12)(i)(A) of this section is satisfied because the aggregate basis of the TFC stock distributed ($50x) is not greater than the sum of the aggregate basis of the TFD stock at the time of the initial transfer ($50x).

(2) The condition of paragraph (k)(12)(i)(B) of this section is satisfied if the next annual certification for the existing gain recognition agreement includes a complete description of the intercompany transaction and an explanation of how the basis condition of paragraph (k)(12)(i)(A) of this section is satisfied.

(B) Under paragraph (o)(6) of this section and the principles of paragraph (o)(1)(i) of this section, because the year 4 sale of the TFC stock to X requires UST to take into account the $40x gain (the intercompany item) from the year 3 distribution, the year 4 sale terminates the gain recognition agreement. If, alternatively, in year 4 USP had sold only 30% of the TFC stock, then under paragraph (o)(6) of this section and the principles of paragraph (o)(1)(ii) of this section the amount of gain subject to the gain recognition agreement would be reduced by 30%.

(iii) *Alternate facts. Intercompany transaction followed by sale of transferee foreign corporation to member.* Assume the same facts as in paragraph (i) of this Example 20, except that, instead of USP selling the TFC stock to X, in year 4 USP sells the TFC stock to USS in exchange for $90x cash. UST and USS are members of the USP consolidated group immediately after the sale. The results of the year 3 distribution of the TFC stock by UST to USP are the same as in paragraph (ii) of this *Example 20.* In addition, under paragraph (k)(12)(ii) of this section, the year 4 sale by USP of the TFC stock to USS is not a triggering event, provided UST includes a complete description of the sale with the annual certification filed for the gain recognition agreement in year 4.

(iv) *Alternate facts. Intercompany transaction followed by complete liquidation of transferee foreign corporation.* Assume the same facts as in paragraph (i) of this *Example 20,* except that, instead of USP selling the TFC stock to X, in year 4 TFC distributes all of its assets to USP in a complete liquidation to which sections 332 and 337 apply. The result is the same as in paragraph (ii) of this *Example 20* because, under the provisions of § 1.1502–13, in year 4 UST takes into account the $40x gain (the intercompany item) from the year 3 distribution.

(v) *Alternate facts. Intercompany transaction followed by triggering event.* Assume the same facts as in paragraph (i) of this *Example 20,* except that instead of USP selling the TFC stock to X, in year 4 TFC disposes of all of the TFD stock in a transaction that constitutes a triggering event under paragraph (j)(1) of this section. Under paragraph (c)(1)(i) of this section UST must recognize $50x gain under the gain recognition agreement. Under paragraphs (c)(4)(i) and (ii) of this section, as of the date of the initial transfer the basis of the TFC stock and TFD stock, respectively, is increased by $50x.

(vi) *Alternate facts. Intercompany transaction followed by section 351 transfer to member.* The facts are the same as in paragraph (i) of this *Example 20,* except that, in year 3, in a section 351 exchange UST transfers all of the TFC stock to USS in exchange for $10x cash and $80x of stock of USS. USS is a member of the USP consolidated group immediately after the exchange. The transfer of the TFC stock by UST to USS is an intercompany transaction. Under section 351(b), UST must generally recognize $10x gain (intercompany item) in connection with the transfer; however, under the provisions of § 1.1502–13, UST does not take the $10x gain into account in year 3. Under paragraph (k)(12) of this section, as result of the intercompany transaction creating an intercompany item ($10x gain), the existing gain recognition agreement ($50x gain) must be divided between UST and USS. UST shall remain subject to a gain recognition agreement of $10x (equal to the amount of the intercompany item). The amount of the gain recognition agreement entered into by USS under paragraph (k)(1) of this section is $40x (equal to the amount of the existing gain recognition agreement, reduced by the amount of the of the gain recognition agreement to which UST remains subject).

Example 21. Transfer of transferred stock to United States person other than U.S. transferor. (i) *Facts.* An individual (A) that is a United States citizen wholly owns TFD, TFC, and DC. A transfers the TFD stock to TFC in a section 351 exchange and enters into a gain recognition agreement with respect to such transfer. In year 5, pursuant to an asset reorganization, TFC transfers all of its assets to DC in exchange solely for DC stock. TFC distributes the DC stock to A pursuant to the plan of reorganization.

(ii) *Result.* The transfer by TFC of the TFD stock to DC and the exchange by A of the TFC stock for DC stock pursuant to the asset reorganization are triggering events under paragraphs (j)(1) and (j)(4) of this section, respectively. The gain recognition agreement does not terminate under paragraph (o)(5) of this section because DC is neither the U.S. transferor, nor an individual that is a United States person, nor a member of the same consolidated group of which the U.S. transferor is a member. However, if paragraph (k)(14) of this section applies the exchanges shall not constitute triggering events.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer of the TFD stock to DC qualifies as a nonrecognition transaction.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately

after the transfer DC, a domestic corporation that is eligible to be a U.S. transferor, retains a direct interest in the TFD stock following the transfer.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, DC is not required to describe any subsequent dispositions or other events that (based on the principles of paragraph (j) of this section) would constitute triggering events for purposes of the new gain recognition agreement, other than the dispositions or other events described in paragraph (j) of this section, because DC holds a direct interest in TFD after the asset reorganization.

Example 22. Transfer of transferred stock to consolidated group member. (i) *Facts.* UST wholly owns DC, a member of the USP consolidated group that includes UST. In year 5, pursuant to an asset reorganization described in section 368(a)(1)(A) TFC merges with and into DC. Immediately after the asset reorganization, DC wholly owns TFD, and the basis of the TFD stock is not greater than the aggregate basis of such stock at the time of the initial transfer.

(ii) *Result.* The gain recognition agreement filed by UST with respect to the initial transfer terminates without further effect if the conditions of paragraph (o)(5) of this section are satisfied.

(A) The condition of paragraph (o)(5)(i) of this section is satisfied because the transfer of the TFD stock is a section 361 exchange.

(B) The condition of paragraph (o)(5)(ii) of this section is satisfied because DC is a member of the consolidated group that includes UST immediately after the section 361 exchange.

(C) The condition of paragraph (o)(5)(iii) of this section is satisfied because the aggregate basis of the TFD stock immediately after the section 361 exchange is not greater than the aggregate basis of the TFD stock at the time of the initial transfer (as adjusted for any gain recognized by UST on such transfer). If the basis condition of paragraph (o)(5)(iii) were not satisfied, under paragraph (o)(5)(iii) of this section, DC could reduce the basis of the TFD stock received in the reorganization. Alternatively, a new gain recognition agreement could be entered into if paragraph (k)(14) of this section applied to the disposition of the TFD stock pursuant to the section 361 exchange.

(iii) *Alternate facts.* The facts are the same as in paragraph (i) of this *Example 22,* except that instead of TFC merging into DC, TFC merges into TFD in a reorganization described in section 368(a)(1)(A). The gain recognition agreement terminates without further effect if the conditions of paragraph (o)(5) of this section are satisfied.

(A) The condition of paragraph (o)(5)(i) of this section is satisfied because the TFD stock issued by TFD to TFC in the reorganization, which is treated as transferred stock under paragraph (b)(2)(iii) of this section, is distributed by TFC to UST pursuant to section 361(c).

(B) The condition of paragraph (o)(5)(ii) of this section is satisfied because UST is the U.S. transferor.

(C) The condition of paragraph (o)(5)(iii) of this section is satisfied if the aggregate basis of the TFD stock received by UST from TFC is not greater than the aggregate basis of the TFD stock at the time of the initial transfer (as adjusted for any gain recognized by UST on such transfer). If the basis condition of paragraph (o)(5)(iii) were not satisfied, under paragraph (o)(5)(iii) of this section, UST could reduce the basis of the TFD stock received in the reorganization.

Example 23. Split-off of transferred stock. (i) *Facts.* X, a domestic corporation that is unrelated to USP and UST, wholly owns TFC. Pursuant to a reorganization described in section 368(a)(1)(B), UST transfers all of the TFD stock to TFC in exchange for 50% of the outstanding voting stock of TFC. UST enters into a gain recognition agreement with respect to such transfer. In year 4, in a split-off transaction to which section 355 applies, TFC distributes all of the TFD stock to X in exchange for all the TFC stock held by X.

(ii) *Result.* Under paragraph (j)(1) of this section, the year 4 distribution of the TFD stock to X constitutes a triggering event. However, the distribution shall not constitute a triggering event if paragraph (k)(14) of this section applies. The gain recognition agreement does not terminate under paragraph (o)(5) of this section because X is not a recipient described in paragraph (o)(5)(ii) of this section.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution of the TFD stock qualifies as a nonrecognition transaction.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution X, a domestic corporation that is eligible to be a U.S. transferor, retains a direct interest in the TFD stock.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if X enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, X is not required to describe, with the new gain recognition agreement, any subsequent dispositions or other events that (based on the principles of paragraph (j) of this section) would constitute triggering events, other than the dispositions described in paragraph (j) of this section, because X directly owns TFD after the distribution.

(D) If X were a United States citizen, the gain recognition agreement would terminate if the condition of paragraph (o)(5)(iii) of this section were satisfied. Alternatively, the gain recognition agreement would continue for its remaining term if the conditions for the application of paragraph (k)(14) of this section were satisfied.

(iii) *Alternate facts. Distribution to unrelated foreign corporation.* The facts are the same as in paragraph (i) of this *Example 23,* except that X is a foreign corporation wholly owned by DC. DC is unrelated to UST. The results are the same as in paragraph (ii) of this *Example 23,* except as follows.

(A) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution DC, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total value of the outstanding stock of X. As a result, DC is treated as retaining an indirect interest in the TFD stock immediately following the distribution.

(B) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, DC must, in addition to the dispositions described in paragraph (j) of this section, include as a triggering event a complete or partial disposition of the stock of X.

(iv) *Alternate facts. Distribution to nonresident alien individual.* The facts are the same as in paragraph (i) of this *Example 23,* except that X is a nonresident alien individual. Paragraph (k)(14) of this section does not apply to the distribution because the conditions of paragraph (k)(14)(ii) and (iii) of this section cannot be satisfied. Therefore, the distribution is a triggering event, and UST will recognize gain under the gain recognition agreement as required under paragraphs (c)(1)(i) and (v) of this section. The result would be the same if X were a foreign corporation and, immediately after the distribution, no United States person owned at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and value of the outstanding stock of X.

Example 24. Applicability of this section to gain recognition agreements filed before March 13, 2009. (i) *Facts.* The facts are the same as in paragraph (i) of *Example 6,* except that the initial transfer occurred on March 7, 2007, and the asset reorganization occurred on July 1, 2008.

(ii) *Result.* Under paragraph (r)(1)(ii) of this section, the rules of § 1.367(a)-8T (see 26 CFR part 1, revised April 1, 2007) apply to the transfers pursuant to the asset reorganization because the initial transfer occurred on March 7, 2007. As a result of the disposition of the TFC stock pursuant to the asset reorganization, under § 1.367(a)-8T(d), USP is required to recognize the gain subject to the gain recognition agreement and pay applicable interest on any additional tax due with respect to such gain. Because the acquiring corporation in the asset reorganization is foreign, an exception under § 1.367(a)-8T(e) is not available for the exchange of TFC stock by USP. However, pursuant to paragraph (r)(2)(i) of this section, because the exception provided by paragraph (k)(14) of this section is not included in § 1.367(a)-8T, USP may apply paragraph (k)(14) of this section to such exchange (provided the conditions of paragraph (k)(14) of this section are satisfied), if the statute of limitations on assessments of tax for the 2007 tax year has not closed. If USP applies paragraph (k)(14) of this section to its exchange of the TFC stock pursuant to the asset reorganization, under paragraph (r)(2)(ii) of this section USP must include the new gain recognition agreement required under paragraph (k)(14)(iii) of this section with an amended Federal income tax return for its 2008 tax year that is filed August 10, 2009.

Example 25. Applicability of this section to gain recognition agreements filed before March 13, 2009. (i) *Facts.* The initial transfer occurs in 2004. In 2005, pursuant to a section 351 exchange, TFC transfers the TFD stock to F1 in exchange solely for F1 voting stock. UST does not file a new gain recognition agreement under § 1.367(a)-8(g)(2) with respect to the exchange.

(ii) *Result.* Under paragraph (r)(1)(ii) of this section, the rules of § 1.367(a)-8 (see 26 CFR part 1, revised April 1, 2006) apply to the year 2005 disposition of the TFD stock because UST filed the gain recognition agreement after July 20, 1998, but before March 7, 2007. Under § 1.367(a)-8(e) (see 26 CFR part 1, revised April 1, 2006), as a result of the disposition of the TFD stock by TFC, UST must recognize the amount of gain subject to the gain recognition agreement. Paragraph (r)(2)(i) of this section does not apply because the rule provided by paragraph (k)(3) of this section was included in § 1.367(a)-8(g)(2) (see 26 CFR part 1, revised April 1, 2006). However, UST may request relief for reasonable cause under § 1.367(a)-8(c)(2) (see 26 CFR part 1, revised April 1, 2006) to file a new gain recognition agreement with respect to the disposition of the TFD stock by TFC in 2005.

(r) *Effective/applicability date*—(1) *General rule*—(i) *Transfers occurring on or after* March 13, 2009. The rules of this section apply to gain recognition agreements filed with respect to transfers of stock or securities occurring on or after March 13, 2009. However, the rules of this section do not apply to gain recognition agreements filed with respect to any such transfer occurring on or after March 13, 2009, if such transfer was entered into pursuant to a written agreement that was (subject to customary conditions) binding before February 11, 2009, and at all times thereafter. Solely for purposes of this paragraph (r), a transfer described in the preceding sentence shall be deemed to be a transfer occurring before March 13, 2009 to which the rules of § 1.367(a)–8 (see 26 CFR part 1, revised April 1, 2006) apply. See paragraph (r)(2)(iii) of this section for the ability to apply the rules of this section with respect to gain recognition agreements filed for taxable years ending before March 13, 2009.

(ii) *Transfers occurring before* March 13, 2009. For matters covered in this section for periods before March 13, 2009 but on or after March 7, 2007, the corresponding rules of § 1.367(a)–8T (see 26 CFR part 1, revised April 1, 2007) apply. For matters covered in this section for periods before March 7, 2007 but on or after July 20, 1998, the corresponding rules of § 1.367(a)–8 (see 26 CFR part 1, revised April 1, 2006) apply. For matters covered in this section for periods before July 20, 1998, the corresponding rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87–85 (1987–2 CB 395) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers before July 20, 1998, then the rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) continue to apply in lieu of this section in the event of any direct or indirect nonrecognition transfer of the same property. See also, § 1.367(a)–3(h).

(2) *Applicability to gain recognition agreements filed before* March 13, 2009—(i) *General rule.* Taxpayers may apply the rules of this regulation § 1.367(a)–8 that were not included in § 1.367(a)–8T (see 26 CFR part 1, revised April 1, 2007), to gain recognition agreements filed with respect to transfers of stock or securities for all open taxable years, if done consistently to all transfers. A U.S. transferor subject to section 877 and § 1.367(a)–8T(d)(6) shall not apply the rules of this regulation to reach a contrary result. A taxpayer that failed to file a gain recognition agreement for a transfer, or to comply materially with any requirement of this section with respect to an existing gain recognition agreement, must obtain relief for reasonable cause for such failure under § 1.367(a)–8T(e)(10) before applying the rules of this regulation § 1.367(a)–8 that were not included in § 1.367(a)–8T as permitted by this paragraph (r)(2). See paragraph (q)(2) of this section, *Examples 24* and *25* for illustrations of the rule provided by this paragraph (r)(2)(i).

(ii) *Taxable years ending before* March 13, 2009. Notwithstanding the requirements of § 1.367(a)–8(d), any gain recognition agreement or other filing required by reason of electing to apply the rules of this regulation § 1.367(a)–8 that were not included in § 1.367(a)–8T, as permitted by this paragraph (r)(2), for a taxable year ending before March 13, 2009 shall be considered filed in accordance with the requirements of § 1.367(a)–8(d), provided the gain recognition agreement or other filing is attached to an original or amended return for such taxable year. An amended return required to be filed by reason of electing to apply the rules of this regulation § 1.367(a)–8 that were not included in § 1.367(a)–8T, as permitted by this paragraph (r)(2), must be filed on or before August 10, 2009. A taxpayer that wishes to apply the rules of this regulation § 1.367(a)–8 that were not included in § 1.367(a)–8T, as permitted by this paragraph (r)(2), but that fails to meet the filing requirement described in the preceding sentence must request relief for reasonable cause under paragraph (p) of this section.

(iii) *Taxable years ending after effective date.* A taxpayer that entered into a gain recognition agreement to which § 1.367(a)–8T (see 26 CFR part 1, revised April 1, 2007) applies may apply the rules of this section in a tax year ending on or after March 13, 2009 by attaching the agreement, certification, or other information related to such gain recognition agreement that the rules of this section require in accordance with the rules of this section and with the time and manner rules provided in § 1.367(a)–8(d).

§ 1.367(a)–8T [Removed]

■ **Par. 8.** Section 1.367(a)–8T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 10.** In § 602.101, paragraph (b) is amended by removing an entry for § 1.367(a)–8T from the table and adding an entry for § 1.367(a)–8 to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–8	1545–2056
* * * * *	

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: January 16, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–1512 Filed 2–9–09; 11:15 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 11, 2009

Part III

The President

Executive Order 13499—Further Amendments to Executive Order 12835, Establishment of the National Economic Council

Executive Order 13500—Further Amendments to Executive Order 12859, Establishment of the Domestic Policy Council

Executive Order 13501—Establishment of the President's Economic Recovery Advisory Board

Executive Order 13502—Use of Project Labor Agreements for Federal Construction Projects

Federal Register
Vol. 74, No. 27
Wednesday, February 11, 2009

Presidential Documents

Title 3—

The President

Executive Order 13499 of February 5, 2009

Further Amendments to Executive Order 12835, Establishment of the National Economic Council

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

Executive Order 12835 of January 25, 1993, as amended, is further amended by:

(a) inserting ''(l) Secretary of Health and Human Services; (m) Secretary of Education; (n) Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison; (o) Assistant to the President for Energy and Climate Change; (p) Assistant to the President and Chief Technology Officer; (q) Administrator of the Small Business Administration'' after ''(k) Secretary of Homeland Security;'' in section 2; and

(b) relettering the subsequent subsections in section 2 appropriately.

THE WHITE HOUSE,
February 5, 2009.

[FR Doc. E9–3106
Filed 2–10–09; 1:00 pm]
Billing code 3195–W9–P

Presidential Documents

Executive Order 13500 of February 5, 2009

Further Amendments to Executive Order 12859, Establishment of the Domestic Policy Council

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

Executive Order 12859 of August 16, 1993, as amended, is further amended by making the following revisions in section 2:

(a) striking ''(u) Assistant to the President and Director of the Office of National Service;'' and inserting in lieu thereof ''(u) Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison;'';

(b) striking ''(v) Senior Advisor to the President for Policy Development;'' and inserting in lieu thereof ''(v) Assistant to the President for Energy and Climate Change;'';

(c) striking ''(x) AIDS Policy Coordinator; and'' and inserting in lieu thereof ''(x) Assistant to the President and Chief Technology Officer;'';

(d) inserting ''(y) Chief Executive Officer, Corporation for National and Community Service'' and ''(z) Director of the Office of Science and Technology Policy; and''; and

(e) relettering the subsequent subsection in section 2 as ''(aa)''.

THE WHITE HOUSE,
February 5, 2009.

[FR Doc. E9–3108
Filed 2–10–09; 1:00 pm]
Billing code 3195–W9–P

Presidential Documents

Executive Order 13501 of February 6, 2009

Establishment of the President's Economic Recovery Advisory Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the strength and competitiveness of the Nation's economy and the prosperity of the American people by ensuring the availability of independent, nonpartisan information, analysis, and advice to the President as he formulates and implements his plans for economic recovery, it is hereby ordered as follows:

Section 1. There is hereby established within the Department of the Treasury the President's Economic Recovery Advisory Board (PERAB). The PERAB shall consist of not more than 17 members, who shall be appointed by the President from among distinguished citizens from outside the Government who are qualified on the basis of achievement, experience, independence, and integrity. The overall membership of the PERAB shall reflect a diverse set of perspectives from across the country and from various sectors of the economy. The President shall designate a Chair from among the members. The Chair shall appoint a Staff Director, who shall supervise the staff of the PERAB.

Sec. 2. The functions of the PERAB are advisory only. The PERAB shall meet regularly and shall:

(a) solicit information and ideas from across the country and from all sectors of our economy about the functioning of the economy, the condition of the financial and banking system, and the prosperity of the American people and of American industry that can serve to inform the decisionmaking of the President, and, with respect to matters deemed appropriate by the President, provide information and recommendations to any other agency with responsibilities related to the economy or financial markets or to the National Economic Council;

(b) report directly to the President on the design, implementation, and evaluation of policies to promote the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people; and

(c) provide analysis and information with respect to the operation, regulation, and healthy functioning of the economy and of the financial and banking system. As deemed appropriate by the President, this analysis and information shall be provided to the Chairman of the Board of Governors of the Federal Reserve System, to any other agency with responsibilities related to the economy or financial markets, or to the National Economic Council.

Sec. 3. *Administration of the PERAB.* (a) All executive departments and agencies and all entities within the Executive Office of the President shall cooperate with the PERAB and provide such information and assistance to the PERAB as the PERAB may request, to the extent permitted by law.

(b) The Department of the Treasury shall provide funding and administrative support for the PERAB to the extent permitted by law and within existing appropriations.

(c) Members of the PERAB shall serve without compensation but may receive transportation expenses, including per diem in lieu of subsistence,

as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701-5707), consistent with the availability of funds.

Sec. 4. *Termination.* The PERAB shall terminate 2 years after the date of this order unless extended by the President.

Sec. 5. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the PERAB, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of the Treasury in accordance with the guidelines that have been issued by the Administrator of General Services.

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

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

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

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

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

THE WHITE HOUSE,
February 6, 2009.

[FR Doc. E9–3112
Filed 2–10–09; 1:00 pm]
Billing code 3195–W9–P

Presidential Documents

Executive Order 13502 of February 6, 2009

Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

Section 1. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

Sec. 2. *Definitions.*

(a) The term ''labor organization'' as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term ''construction'' as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term ''large-scale construction project'' as used in this order means a construction project where the total cost to the Federal Government is $25 million or more.

(d) The term ''executive agency'' as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term ''project labor agreement'' as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

Sec. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i)

advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

Sec. 4. Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;and

(f) fully conform to all statutes, regulations, and Executive Orders.

Sec. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

Sec. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

Sec. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

Sec. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

Sec. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

Sec. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

THE WHITE HOUSE,
February 6, 2009.

[FR Doc. E9–3113
Filed 2–10–09; 1:00 pm]
Billing code 3195–W9–P

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