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WHEN: Tuesday, June 9, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB99

Common Crop Insurance Regulations, Cabbage Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published February 26, 2009. The regulation pertains to the insurance of cabbage.

DATES: *Effective Date:* June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926– 7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction converted the cabbage pilot crop insurance program to a permanent crop insurance regulation to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms. It was published February, 26, 2009 (74 FR 8705–8713).

Need for Correction

As published, the final regulation contained an error which may prove to be misleading and needs to be clarified. Section 12(c) of the Cabbage Crop Insurance Provisions mistakenly included a reference to section 14(a)(3) (Your Duties) of the Basic Provisions. This specific reference to section 14(a)(3) (Your Duties) of the Basic Provisions should have been referenced in section 12(e) of the Cabbage Crop Insurance Provisions. The correct reference in section 12(c) of the Cabbage Crop Insurance Provisions should be to the provisions contained in section 14 of the Basic Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Cabbage, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 7 CFR part 457 is corrected as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(l) and 1506(p).

§ 457.171 [Amended]

■ 2. Amend § 457.171 as follows:
■ a. In section 12(c) by removing the phrase ''(a)(3) (Your Duties)''; and
■ b. In section 12(e) by removing the phrase ''section 14'' and adding the phrase ''section 14(a)(3)(Your Duties)'' in its place.

Signed in Washington, DC, on May 21, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–12708 Filed 6–1–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1467

RIN 0578–AA47

Wetlands Reserve Program

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

ACTION: Interim final rule; amendment with reopening of public comment.

SUMMARY: The Natural Resources Conservation Service (NRCS) published in the **Federal Register** of January 15, 2009, an interim final rule with request for comment amending the program regulations for the Wetlands Reserve Program (WRP) to incorporate programmatic changes authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act). The January 15, 2009 interim final rule changed the nature and scope of the agreement NRCS enters into with the landowner under a WRP easement in a manner which could interfere with the restoration efforts of some lands enrolled in the program. Since the change to the program was not necessitated by the 2008 Act, this amendment to the January 15, 2009 interim final rule revises these provisions to further the practical administration of the program consistent with the WRP statute. This amendment re-opens the public comment period for the interim final rule, as amended, for an additional 30 days.

DATES: *Effective Date:* The rule is effective June 2, 2009.

Comment Date: Submit comments on or before July 2, 2009. In addition, the comment period for the WRP Interim Final Rule published on January 15, 2009 (74 FR 2317) is hereby re-opened and comments must be received on or before July 2, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS–IFR–08013) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Easements Programs Division, Department of Agriculture, Natural Resources Conservation Service, Wetlands Reserve Program Comments, Room 6819 South Building, Washington, DC 20013.
- *Fax:* (202) 720–9689
- *Hand Delivery:* USDA South Building, 1400 Independence Avenue, SW., Room 6819, Washington, DC 20250 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4527 in order to be escorted into the building.
- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/*; select the *Farm Bill* link from the menu; select the

Interim final link from beneath *the Final and Interim Final Rules Index* title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, Room 6819, P.O. Box 2890, Washington, DC 20013–2890; *Phone:* (202) 720–1854; *Fax:* (202) 720–9689; or *e-mail: wrp2008@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget reviewed the January 15, 2009 interim final rule and determined that it was an economically significant regulatory action since it results in an annual effect on the economy of $100 million or more. Pursuant to Executive Order 12866, NRCS conducted a cost-benefit analysis of the potential impacts associated with the interim final rule for WRP published in the **Federal Register** on January 15, 2009. The provisions of this interim final rule do not alter the analysis that was originally prepared. The administrative record is available for public inspection in Room 5831 USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC. A copy of the analysis is available upon request from the Director, Easement Programs Division, Natural Resources Conservation Service, Room 6819 South Building, Washington, DC 20250–2890 or electronically at: *http://www.nrcs.usda.gov/programs/wrp/* under the *Program Information* title.

Regulatory Flexibility Act.

The Regulatory Flexibility Act is not applicable to this interim final rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A programmatic environmental assessment has been prepared in association with the interim final rulemaking published on January 15, 2009. The provisions of this interim final rule do not alter the assessment and the findings that were originally prepared. The analysis has determined that there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement is not required to be prepared (40 CFR part 1508.13). NRCS has extended the public comment period for the Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) until July 2, 2009. A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/.* A hard copy may also be requested from the following contact and address: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to *NEPA2008@wdc.usda.gov,* (2) e-mail to e-gov Web site *http://www.regulations.gov,* or (3) written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the issuance of the interim final rule published on January 15, 2009, disclosed no disproportionately adverse impacts for minorities, women, or persons with disabilities. The provisions of this interim final rule do not alter the analysis that was originally prepared. Copies of the Civil Rights Impact Analysis are available, and may be obtained from the Director, Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or electronically at *http://www.nrcs.usda.gov/programs/WRP.*

Paperwork Reduction Act

Section 2904 of the 2008 Act requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this amendment or the January 15, 2009 interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies in general and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive and preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11, 614, and 780 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), NRCS classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), USDA assessed the effects of this interim final rule on State, local, Tribal Governments, and the public. This rule does not compel the expenditure of $100 million or more by any State, local, Tribal Governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The January 15, 2009, interim final rule was a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets. The provisions of this interim final rule do not alter the original determination under SBREFA. However, section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause

to do so in order to meet the Congressional intent to have the conservation programs authorized or amended by Title II in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the **Federal Register**.

Executive Order 13132

E.O. 13132 requires NRCS to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NRCS may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NRCS consults with State and local officials early in the process of developing the proposed regulation. NRCS shows sensitivity to federalism concerns by requiring the State Conservationist to meet with and provide opportunities for involvement of State and local governments through the State Technical Committee. The interim final rule published on January 15, 2009, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. The provisions of this interim final rule do not alter this determination. Thus, the Executive Order does not apply to this rule.

Executive Order 13175

This interim final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Tribal Governments. NRCS has assessed the impact of this interim final rule on Tribal Governments and has concluded that this rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Discussion of Program

Background

This Amendment is effective on the date published in the **Federal Register**. The WRP is a voluntary program that provides assistance to eligible landowners to restore and protect wetlands. The 2008 Act made several program changes to WRP implementation which NRCS incorporated into the January 15, 2009, interim final rule. However, NRCS made other changes to the program in the interim final rule that were not necessitated by the 2008 Act amendments. In particular, the January 15, 2009, interim final rule revised the nature of the relationship that NRCS and a landowner have in regards to the restoration and management of lands enrolled in the program.

The interim final rule introduced several new provisions that place a landowner in violation of the easement if a landowner either fails to complete the restoration activities on the easement or if the landowner transfers the property to a person or entity that is ineligible to receive payment or unwilling to complete the restoration activities. The preamble discussion explained that this policy will create situations where NRCS expends funds for the enrollment and acquisition of an easement, but is not able to restore such enrolled lands because of subsequent actions or inactions taken by the landowner. Furthermore, the interim final rule specified that, as a violation of the easement, NRCS has the right to have the easement remain in force and to seek a refund of any payments made in furtherance of the enrollment. However, the easement lands will remain unrestored, and therefore not meet the basic purpose of the program.

After further review, NRCS has determined that the authority provided under the WRP statute is broad enough to avoid this result by allowing the parties at the time of enrollment to agree to the method of restoration completion. Specifically, the purpose of WRP is for NRCS to assist landowners with the restoration, enhancement, and protection of the wetlands on their property through the purchase of an easement; the cost-sharing of practices and activities; and the management, monitoring, and enforcement of the easement area in accordance with the easement terms and conditions. The WRP statute provides discretion for: (1) NRCS to include terms and conditions in the WRP deed with the landowner which further the practical administration of the program; and (2) NRCS to enter into an agreement with the landowner for the implementation of the Wetland Reserves Plan of Operation (WRPO). The types of violation situations described above can be avoided if NRCS and the landowner agree, at the time of enrollment, that under the terms of the deed, NRCS may restore, protect, enhance, maintain, and manage activities on the easement area by providing cost-share assistance directly to the landowner, or as determined necessary by NRCS, through another person or entity.

NRCS interprets the authority and discretion provided under 16 USC 3837d(b) to allow NRCS to make such payments to restore and maintain the easement area. In particular, 16 USC 3838d(b) provides that NRCS may make payments to others without ''regard to any other provision of law'' and in a manner NRCS ''determines is fair and reasonable.'' In this way, NRCS is able to ensure that all properties enrolled in WRP are able to be restored as contemplated by the WRP statute despite events subsequent to enrollment.

NRCS remains subject to the statutory limitations regarding the level of cost-share assistance payments that can be made, whether such assistance is made directly to the landowner or through another person or entity. Therefore, for 30-year easements, NRCS may not provide more than 75 percent of the cost of establishing or installing conservation practices or activities specified in the WRPO.

Accordingly, NRCS is amending the January 15, 2009, interim final rule to maintain the efficient working relationship between NRCS and landowners enrolled in the program and ensure that the Federal conservation investment is protected. NRCS is adding language to § 1467.4 and § 1467.7 to clarify the scope of the agreement between NRCS and the landowner entered into at the time of enrollment. NRCS is also removing language in § 1467.7(c)(1) and § 1467.10(e) that established the basis for determining a landowner in violation and recoupment of costs if the land subject to an easement was sold to an ineligible landowner prior to completion of the restoration practices.

Additionally, NRCS is making a correction to the eligibility criteria related to closed basin lakes and potholes at § 1467.4(e)(5). The IFR established that the depth of 6.5 feet would be determined at the time of enrollment. Water depths vary throughout the year and from year to year due to the dynamic aspects related to flooding in these systems. Since the time of enrollment is when NRCS is

taking the administrative action regarding the signing of documents rather than assessing site conditions, NRCS determined that the time of enrollment is not the appropriate stage in the process for determining water depth eligibility. Therefore, NRCS is removing the clause related to ''at the time of enrollment'' from § 1467.4(e)(5). NRCS will base its determination concerning eligibility as soon as practicable after receiving the landowner application and prior to enrollment.

NRCS is taking this opportunity to notify the public of its continued dedication to proactive restoration of lands enrolled in WRP. In the January 15, 2009, interim final rule, NRCS added language to § 1467.12, ''the WRPO Development,'' to affirm its dedication to the adoption of more proactive restoration and enhancement practices: ''Specifically, the WRPO will consider and address, to the extent practicable, the on-site alternations and the off-site watershed conditions that adversely impact the hydrology and associated wildlife and wetland functions and values.''

NRCS believes that the long-term cost-effectiveness of its wetland restoration and management efforts requires that greater investment be made in the initial implementation of practices that create the appropriate conditions for wetland flora and fauna to thrive. For example, NRCS incorporates micro-topography into restoration practices to mimic the oxbows of flooding and to disrupt the establishment of noxious weeds. NRCS designs longer slope lengths on its berms to increase the amount of shallow water available to shorebirds and to minimize damage to the berm from flood overflow. These practices may cost more than plugging a ditch or breaking known locations of drainage tile, but are necessary to reduce long-term management headaches and to realize the WRP purposes of maximizing wildlife and wetland functions and values. NRCS believes that quality restoration efforts result in more fully meeting WRP statutory intent, increasing landowner satisfaction, and benefitting local communities from increased sources of recreational income.

List of Subjects in 7 CFR Part 1467

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands, and Wetland protection.

■ For the reasons stated in the preamble, the CCC amends part 1467 of Title 7 of the Code of Federal Regulations as set forth below:

■ 1. The authority citation for part 1467 continues to read as follows:

Authority: 16 U.S.C. 3837 *et seq.*

■ 2. Section 1467.4 is amended by revising paragraph (a)(2) and (e)(5) to read as follows:

§ 1467.4 Program requirements.

(a) * * *

(2) To participate in WRP, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. NRCS may provide cost-share assistance through a restoration cost-share agreement or an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. For easement transactions, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS, or other designee.

* * * * *

(e) * * *

(5) Land under paragraph (e)(3)(ii)(B) of this section may be considered for enrollment into 30-year easements if it meets the criteria under paragraph (e)(3) of this section, it is located in the Prairie Pothole Region as defined under § 1467.3 of this part, and the size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

* * * * *

■ 3. Section 1467.7 is amended by revising paragraph (c)(1), redesignating paragraph (d) as paragraph (e), adding a new paragraph (d) to read as follows:

§ 1467.7 Enrollment process.

* * * * *

(c) *Acceptance and effect of offer of enrollment.* (1) *Easement.* For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement compensation amount; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the option agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

* * * * *

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment document establishes the terms of enrollment consistent with the terms and conditions of this part, and identifies the:

(i) Scope of the agreement between NRCS and the landowner;

(ii) Basis for NRCS to obligate funds; and

(iii) Nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

(2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land as set forth under § 1467.11;

(ii) Implementing a WRPO which provides for the restoration and protection of the functions and values of wetlands;

(iii) Recording the easement in accordance with applicable State law; and

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

* * * * *

§ 1467.10 [Amended]

■ 4. Section 1467.10 is amended by removing paragraph (e).

■ 5. Section 1467.11 is amended by removing paragraphs (a)(5) and (b)(4),

and by revising paragraphs (a)(2)(iv) and (b)(2)(iii) to read as follows:

§ 1467.11 Easement and 30-year contract participation requirements.

(a) * * *

(2) * * *

(iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.

* * * * *

(b) * * *

(2) * * *

(iii) The right to restore, protect, enhance, maintain, and manage activities on the enrolled area.

* * * * *

■ 6. Section 1467.12 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 1467.12 The WRPO development.

* * * * *

(b) * * * NRCS will review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.

* * * * *

Signed this 26th day of May 2009, in Washington, DC.

Virginia (Ginger) L. Murphy,

Acting Vice President, Commodity Credit Corporation and Acting Chief, Natural Resources Conservation Service.

[FR Doc. E9–12680 Filed 6–1–09; 8:45 am]

BILLING CODE 3410–16–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI60

[NRC–2009–0132]

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM 100 dry cask storage system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1014. Amendment No. 6 will modify the CoC to add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC–24, MPC–24E, MPC–24EF, MPC–32, and MPC–32F models; and to correct legacy editorial issues in Appendices A and B Technical Specifications.

DATES: The final rule is effective August 17, 2009, unless significant adverse comments are received by July 2, 2009. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0132]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.htm*l. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC), technical specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML090290140.

CoC No. 1014, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72, which added a new Subpart K within 10 CFR Part 72, entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the HI–STORM 100 cask system design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014.

Discussion

On April 15, 2008, and as supplemented August 1, November 17, and November 26, 2008, the certificate holder, Holtec International (Holtec), submitted an application to the NRC that requested an amendment to CoC No. 1014. The amendment included changes to add instrument tube tie rods used for pressurized water reactor 15x15

and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC–24, MPC–24E, MPC–24EF, MPC–32, and MPC–32F models; and to correct legacy editorial issues in Appendices A and B of the TS. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the HI–STORM 100 cask system listing in 10 CFR 72.214 by adding Amendment No. 6 to CoC No. 1014. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended HI–STORM 100 cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into HI–STORM 100 casks that meet the criteria of Amendment No. 6 to CoC No. 1014 under 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate No. 1014 is revised by adding the effective date of Amendment No. 6.

Procedural Background

This rule is limited to the changes contained in Amendment No. 6 to CoC No. 1014 and does not include other aspects of the HI–STORM 100 dry storage cask system. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on August 17, 2009. However, if the NRC receives any significant adverse comments on this direct final rule by July 2, 2009, then the NRC will publish a document that withdraws this action and will subsequently address any comment received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the HI–STORM 100 cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the HI–STORM 100 cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license.

The amendment will add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC–24 and MPC–32 models; and correct legacy editorial issues in the Appendices A and B TS.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–

6219, e-mail *Jayne.McCausland@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the HI–STORM 100 cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On April 15, 2008, and as supplemented August 1, November 17, and November 26, 2008, the certificate holder, Holtec, submitted an application to the NRC to amend CoC No. 1014 to add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC–24, MPC–24E, MPC–24EF, MPC–32, and MPC–32F models; and to correct legacy editorial issues in the Appendices A and B TS.

The alternative to this action is to withhold approval of Amendment No. 6 and to require any Part 72 general licensee, seeking to load spent fuel into HI–STORM 100 casks under the changes described in Amendment No. 6, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Public Law 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Public Law 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Public Law 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Public Law 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 7th day of May 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–12619 Filed 6–1–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0498; Directorate Identifier 2009–NM–065–AD; Amendment 39–15923; AD 2009–11–13]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Learjet Model 45 airplanes. For certain airplanes, this AD requires repetitive inspections for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, and corrective action if necessary. This AD also requires, for all airplanes, repetitive inspections for discrepancies of the left engine's nacelle tubing, repetitive inspections for evidence of fluid leakage within the left engine accessory compartment, and corrective actions if necessary. This AD was prompted by reports of chafed hydraulic tubes in the left-hand engine. We are issuing this AD to detect and correct chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

DATES: This AD is effective June 17, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 17, 2009.

We must receive comments on this AD by August 3, 2009.

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

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

For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of chafing found on hydraulic tubing in the left-hand engine. Specifically, the chafing was found on a case drain tube from the hydraulic pump case installed on the left-hand engine, on the lower forward cowl latch structure on the inboard side of the engine. Chafing was also found on a hydraulic pressure tube, on the hydraulic case drain tube on the left-hand engine, and on the hydraulic supply tube on the oil reservoir on the left-hand engine. Chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, if not corrected, could result in a fire in the engine nacelle and loss of control of the airplane.

Relevant Service Information

We reviewed the following service bulletins:

- Bombardier Alert Service Bulletin A45–29–15, dated December 26, 2006.
- Bombardier Alert Service Bulletin A40–29–03, dated December 26, 2006.

The service bulletins describe procedures for a detailed inspection for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine. The service bulletins also describe procedures for repositioning any tube that has damage within certain limits and replacing any tube that has damage that exceeds those limits.

We have reviewed the following temporary revisions (TRs):

- Learjet 40 Temporary Revision (TR) 71–1, dated April 28, 2009, to the Learjet 40 Maintenance Manual MM–105.
- Learjet 45 TR 71–1, dated April 28, 2009, to the Learjet 45 Maintenance Manual MM–104.

The TRs describe procedures for repetitive detailed inspections for discrepancies, including damage to the left engine's nacelle tubing and inadequate clearance between any unsupported section of the tube or other tubing and surrounding components. The TRs also describe procedures for adjusting the tubing and clamping to achieve minimum clearance and replacing any tube that has damage exceeding certain limits.

We have reviewed the engine—maintenance practices in the following maintenance manual documents:

- Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009, Powerplant–Maintenance Practices Section 71–00–00 and Engine–Maintenance Practices Section 71–00–01 (for M45 airplanes).
- Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009, Engine–Maintenance Practices Section 71–00–01 (for M40 airplanes).

The engine–maintenance practices sections in the maintenance manuals (MMs) describe procedures for a general visual inspection for evidence of engine oil, hydraulic fluid, or fuel leakage within the left engine accessory compartment. For airplanes on which there is evidence of leakage, the MMs describe procedures for removing each plumbing clamp within the area affected

by the service bulletins and MM TRs identified in this AD, and cleaning and removing all evidence of fluid leakage. Tubing clamps that are associated with inadequate clearance are replaced with new clamps.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This AD requires accomplishing the actions specified in the service information described previously, except as discussed below.

Differences Between the AD and the Service Information

Although the service bulletins provide for one-time inspections, this AD requires that those inspections be repeated, until a terminating action can be accomplished to adequately address the identified unsafe condition. This difference has been coordinated with the manufacturer.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

Chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling could result in a fire in the engine nacelle and loss of control of the airplane. Because of our requirement to promote safe flight of civil aircraft and thus the critical need to ensure the proper functioning of the affected systems, and because of the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0498; Directorate Identifier 2009–NM–065–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–11–13 Learjet: Amendment 39–15923. Docket No. FAA–2009–0498; Directorate Identifier 2009–NM–065–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 45 airplanes, certificated in any category, serial numbers 45–002 through 45–4000 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Unsafe Condition

(e) This AD results from reports of chafed hydraulic tubes in the left-hand engine. The Federal Aviation Administration is issuing this AD to detect and correct chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

Compliance

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

Repetitive Inspections: Case Drain Tube

(g) For airplanes having serial numbers identified in Table 1 of this AD: Within 50 flight hours after the effective date of this AD, do a detailed inspection for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, in accordance with the applicable service bulletin identified in Table 1 of this AD. If any damage is found, before further flight, reposition or replace the tube,

as applicable, in accordance with the Accomplishment Instructions of the service bulletin identified in Table 1 of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 150 flight hours.

TABLE 1—SERVICE BULLETINS FOR INSPECTIONS

For—	Use—
Serial numbers 45–005 through 45–313 inclusive (commonly referred to as ''M45'' airplanes).	Bombardier Alert Service Bulletin A45–29–15, dated December 26, 2006.
Serial numbers 45–2001 through 45–2063 inclusive (commonly referred to as ''M40'' airplanes).	Bombardier Alert Service Bulletin A40–29–03, dated December 26, 2006.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Repetitive Inspections: Nacelle Tubing

(h) Within 50 flight hours after the effective date of this AD, do a detailed inspection for discrepancies of the left engine's nacelle tubing, in accordance with the applicable temporary revision (TR) identified in Table 2 of this AD. Discrepancies include damaged tubing, and inadequate clearance between any unsupported section of the tube or other tubing and surrounding components. If any discrepancy is found, before further flight, adjust the tubing and clamping or replace the tubing, as applicable, in accordance with the applicable TR identified in Table 2 of this AD. Repeat the inspection thereafter at intervals not to exceed 150 flight hours.

TABLE 2—TRS FOR INSPECTIONS

For—	Use—
Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as ''M40'' airplanes).	Learjet 40 TR 71–1, dated April 28, 2009, to the Learjet 40 Maintenance Manual MM–105.
Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as ''M45'' airplanes).	Learjet 45 TR 71–1, dated April 28, 2009, to the Learjet 45 Maintenance Manual MM–104.

Concurrent Inspections: Fluid Leakage

(i) Concurrently with each inspection required by paragraph (h) of this AD, do a detailed inspection for evidence of engine oil, hydraulic fluid, or fuel leakage within the left engine accessory compartment, in accordance with the applicable maintenance manual section identified in Table 3 of this AD. If there is evidence of leakage: Before further flight, remove each plumbing clamp within the inspection areas specified in paragraphs (g) and (h) of this AD, and clean and remove all evidence of fluid leakage.

TABLE 3—MAINTENANCE MANUAL SECTIONS FOR INSPECTIONS

For—	Use—
Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as ''M45'' airplanes).	Section 71–00–00, ''Powerplant—Maintenance Practices,'' and Section 71–00–01, ''Engine—Maintenance Practices,'' of the Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009.
Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as ''M40'' airplanes).	Section 71–00–01, ''Engine—Maintenance Practices,'' of the Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009.

Additional Corrective Action for Fluid Leakage and Inadequate Clearance

(j) If evidence of fluid leakage was found during any inspection required by paragraph (i) of this AD, or, if inadequate clearance was found during any action required by paragraph (g) or (h) of this AD: Before further flight, replace each clamp associated with the fluid leakage or inadequate clearance with a new clamp, in accordance with the applicable maintenance manual identified in Table 3 of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may re-install, on any airplane, any plumbing clamp that has been removed in accordance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* James P. Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(m) You must use the service information contained in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Alert Service Bulletin A40–29–03	Original	December 26, 2006.
Bombardier Alert Service Bulletin A45–29–15	Original	December 26, 2006.
Learjet 40 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–105	Original	April 28, 2009.
Learjet 45 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–104	Original	April 28, 2009.
Section 71–00–00 of the Learjet 45 Maintenance Manual MM–104	Revision 47	March 30, 2009.
Section 71–00–01 of the Learjet 45 Maintenance Manual MM–104	Revision 47	March 30, 2009.
Section 71–00–01 of the Learjet 40 Maintenance Manual MM–105	Revision 15	March 30, 2009.

Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009, has the following effective pages:

List of effective pages			
Page title/description	Page number(s)	Revision number	Date shown on page(s)
Maintenance Manual Title Page	None shown	15	March 30, 2009.
Maintenance Manual Revision Highlights	1–2	None Shown *	March 30, 2009.
Record of Revisions	1	None Shown *	March 30, 2009.
Chapter 71 List of Effective Pages	1	None Shown *	March 30, 2009.
Section 71–00–01	201–223	None Shown *	December 25, 2006.

(*Only the Maintenance Manual Title Page and Record of Revisions of Learjet 40 Maintenance Manual MM–104 have revision level information. These pages do not have this information.) Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009, has the following effective pages:

List of effective pages			
Page title/description	Page number(s)	Revision number	Date shown on page(s)
Maintenance Manual Title Page	None Shown	47	March 30, 2009.
Maintenance Manual Revision Highlights	1–3	None Shown *	March 30, 2009.
Record of Revisions	1–2	None Shown *	March 30, 2009.
Chapter 71 List of Effective Pages	1	None Shown *	March 30, 2009.
Section 71–00–00	201	None Shown *	April 10, 1998.
Section 71–00–01	201–223	None Shown *	April 28, 2008.

(*Only the Maintenance Manual Title Page and Record of Revisions of Learjet 45 Maintenance Manual MM–104 have revision level information. These pages do not have this information.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on May 20, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12518 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0213; Directorate Identifier 2008–NM–224–AD; Amendment 39–15921; AD 2009–11–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–90–30 airplanes. This AD requires installing fuses and wire protection in certain wing and fuel tank spars. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible damage to the fuel level float or pressure switch wires. Such damage could become a potential ignition source inside the fuel tank, and, when combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective July 7, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 7, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail

dse.boecom@boeing.com; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model MD–90–30 airplanes. That NPRM was published in the **Federal Register** on March 10, 2009 (74 FR 10202). That NPRM proposed to require installing fuses and wire protection in certain wing and fuel tank spars.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 15 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation, depending on group.	20 or 26	$80	$1,132 or $1,822	$2,732 or $3,902	15	$40,980 to $58,530.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–11–11 McDonnell Douglas: Amendment 39–15921. Docket No. FAA–2009–0213; Directorate Identifier 2008–NM–224–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 7, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–90–30 airplanes, certificated in any category, excluding fuselage number 2159.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible damage to the fuel level float or pressure switch wires. Such damage could become a potential ignition source inside the fuel tank, and, when combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

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

Installation

(g) Within 5 years after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90–28–012, dated November 19, 2008 (''the service bulletin'').

(1) For Group 1 airplanes identified in the service bulletin, install fuel level float switch in-line fuses and wire protection in the left and right wing forward spars and center fuel tank forward spar, right side.

(2) For Group 2 airplanes identified in the service bulletin, install fuel level float switch in-line fuses and wire protection in the left and right wing forward spars, center fuel tank forward spar, right side, and forward auxiliary fuel tank, right side; and install a fuel pressure switch in-line fuse and wire protection in the center fuel tank forward spar, left side.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin MD90–28–012, dated November 19, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on May 20, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12521 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0413]

Drawbridge Operating Regulations; Gulf Intracoastal Waterway, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the lveston Causeway Railroad Bascule Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. This deviation provides for the bridge to remain closed to navigation for eight hours with an opening at noon for the passage of vessels. The purpose of the closure is to replace parts on the bridge.

DATES: This deviation is effective from 7 a.m. to 3 p.m. on Tuesday, June 9, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0413 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0413 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David M. Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Burlington Northern Railway Company has requested a temporary deviation in order to perform necessary maintenance on the Conley joints of the Galveston Causeway Railroad Bascule Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. The maintenance is essential for the continued safe operation of the railroad bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. until 3 p.m. on Tuesday, June 9, 2009. The bridge will open for the passage of vessels at noon for all vessels to transit through the bridge. Currently, the draw opens on signal for the passage of vessels.

The bridge has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available. This closure is considered necessary for repair of the bridge.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 18, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–12783 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0414]

Drawbridge Operation Regulation; Houma Navigation Canal, Mile 36.0, at Houma, Terrebonne Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The deviation is necessary to replace the center pivot pier bearings of the bridge. This deviation allows the bridge to remain closed for 24 hours to accomplish the work.

DATES: This deviation is effective from 6 a.m. on July 22, 2009 until 6 a.m. on July 23, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0414 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0414 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David M. Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Louisiana Department of Transportation and Development (LDOTD) has requested a temporary deviation from the operating schedule of the State Route 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The closure is necessary to allow for repairs to the bridge.

Presently, the bridge operates in accordance with 33 CFR 117.455 which requires the draw of the bridge across the Houma Navigation Canal at S661, mile 36.0 at Houma, to open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m., from 11:45 a.m. to 12:15 p.m., from 12:45 p.m. to 1:15 p.m., and 4:30 p.m. to 6 p.m. This deviation will allow the bridge to remain in the closed-to-navigation position from 6 a.m. on Wednesday, July 22, 2009 until 6 a.m. on Thursday, July 23, 2009. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users it has been determined that this closure will not have a significant effect on these vessels.

The vertical clearance of the swing bridge in the closed-to-navigation position is 1.0 feet and unlimited in the open-to-navigation position. An alternate route is available through La Carpe Bayou. During the deviation period, LDOTD will provide drawtenders for the State Route 661 bridge across La Carpe Bayou, mile 7.5 to open the bridge on signal; except that, the draw need not be opened for the passage of vessels from 7 a.m. until 8:30 a.m. and from 4:30 p.m. until 6 p.m. At the end of the deviation period the La Carpe Bayou bridge will return to its operating schedule in accordance with 33 CFR 117.461. As this work is proposed during hurricane season, if any storms are in the Gulf of Mexico, the work may be postponed and rescheduled.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 18, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–12782 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0347]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow participants from the Metropolitan Car Club to cross the bridge, in a police escorted motorcade. This deviation allows the bridge to remain in the closed-to-navigation position during the motorcade.

DATES: This deviation is effective from 1:30 p.m. through 2:30 p.m. on June 26, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0347 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0347 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Caltrans requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 1:30 p.m. through 2:30 p.m. on June 26, 2009 to allow participants from the Metropolitan Car Club to cross the bridge, in a police escorted motorcade. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In the event of an emergency the drawspan can be opened with 10 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 14, 2009.

P.F. Zukunft,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. E9–12786 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0378]

RIN 1625–AA09

Drawbridge Operation Regulations; Curtis Creek, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Pennington Avenue Bridge, at mile 0.9, across Curtis Creek in Baltimore, MD. This deviation is necessary to facilitate mechanical repairs to the bridge. Under this temporary deviation, the drawbridge may remain in the closed position during the deviation period.

DATES: This deviation is effective from 7 a.m. on July 20, 2009, to 8 p.m. on August 31, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0378 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0378 in the Docket ID box, processing Enter, and then clicking on the item in the Docket ID box. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, e-mail *Bill.H.Brazier@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826

SUPPLEMENTARY INFORMATION: The Maryland State Highway Administration (MSHA), who owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set forth in 33 CFR 117.5 and 33 CFR 117.557 to facilitate mechanical repairs.

The Pennington Avenue Bridge, a lift-type drawbridge, has a vertical clearance in the closed position to vessels of 38 feet, above mean high water. Vessels may pass underneath the bridge while the bridge is in the closed position.

Under this temporary deviation, the drawbridge will provide partial openings of the lift spans for vessels. The MSHA will repair a cracked trunnion bearing on the southwest leaf of the lift span. To facilitate repairs, MSHA must immobilize half of the drawbridge spans to single-leaf operation each day, beginning 7 a.m. on July 20, 2009, until 8 p.m. on August 31, 2009. While not under repair, the opposite connecting spans on the north side will continue to open for vessels.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 11, 2009.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E9–12785 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0376]

Drawbridge Operation Regulations; Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey. Under this temporary deviation the draw may remain in the closed position for seven hours on two days to facilitate rail maintenance. Vessels that can pass under the draw without an opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 9 a.m. on June 12, 2009 through 4 p.m. on June 23, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0376 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0376 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165 *joe.arca@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operation, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing regulations are listed at 33 CFR 117.747.

The owner of the bridge, New Jersey Transit Rail Operations (NJTRO), requested a temporary deviation to facilitate scheduled rail maintenance at the bridge.

In order to perform the bridge maintenance the bridge must remain in the closed position.

Under this temporary deviation the NJTRO Bridge across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, need not open for the passage of vessel traffic between 9 a.m. and 4 p.m. on June 12 and June 15, 2009. In the event inclement weather prevents the bridge maintenance from being performed on

the above dates then work may be performed on either June 19 or June 23, 2009.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 13, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–12784 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0315]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, St. Petersburg Beach and South Pasadena, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Pinellas Bayway Structure ''C'' and Corey Causeway (SR 693) Bridges across the Gulf Intracoastal Waterway, miles 114 and 117.7, at St. Petersburg Beach, and South Pasadena, FL. This deviation will test a change to the drawbridge operation schedules to determine whether a permanent change to the schedule is needed. This deviation will allow both drawbridges to operate on a twice an hour schedule during the day. This deviation may be terminated/cancelled at any time via a Broadcast Notice to Mariners.

DATES: This deviation is effective from May 14, 2009, through 7 p.m. on May 31, 2009. Comments should be submitted by June 10, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0315 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. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call Michael Lieberum, Bridge Branch at 305–415–6744. 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 action 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–2008–1225), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a 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–2009–0315'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit 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–2009–0315 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Background and Purpose

The Pinellas Bayway Structure ''C'' bridge has a vertical clearance of 25 feet in the closed position and the Corey Causeway bridge has a vertical clearance of 23 feet in the closed position.

Under the current operating regulations at 33 CFR 117.287(e), the draw of the Pinellas Bayway Structure ''C'' bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, twenty minutes past the hour, and forty minutes past the hour. Per 33 CFR 117.287(f), the draw of the Corey Causeway (SR 693) bridge, mile 117.7 at South Pasadena, shall open on signal; except that, from 8 a.m.

to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays and Sundays and Federal holidays, the draw need to open only on the hour, twenty minutes after the hour, and forty minutes after the hour.

The local mayor has requested that the Coast Guard evaluate a twice an hour schedule. The Florida Department of Transportation, the bridge owner, has a concern related to the length of time during bridge openings on the weekends due to the accumulation of vessels between openings which may directly impact vehicle traffic. For this reason, FDOT will be monitoring the traffic flow through the area during this test and may recommend that the test be terminated at any point that vehicle traffic patterns show a detriment rather than an improvement in traffic flow. This test may have a minor impact on vessel traffic as there will be two openings an hour rather than three during these same time periods.

This deviation will start on the date signed and will continue until 7 p.m. on May 31, 2009, unless otherwise terminated/cancelled due to heavier than normal traffic patterns. The Pinellas Bayway Structure ''C'' will open on demand except that from 7 a.m. to 7 p.m. the bridge will open on the hour and half-hour and Corey Causeway bridges will open on demand except that from 7 a.m. to 7 p.m. the bridge will open on the quarter and three-quarter hour, seven days a week. Vessels that may pass under the bridges without an opening may do so at any time. Public vessels of the United States and tugs with tows must be passed at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: 14 May 2009.

R.S. Branham,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. E9–12822 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0424]

RIN 1625–AA00

Safety Zone: F/V PATRIOT, Massachusetts Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is creating a temporary safety zone surrounding the sunken fishing vessel PATRIOT located approximately 17 miles northeast of Scituate, Massachusetts in Massachusetts Bay. The safety zone is in effect while the vessel remains on the sea floor and subsequently re-floated during salvage operations. The safety zone will then move with the vessel until the PATRIOT is safely moored. This action is necessary to ensure that vessels are not endangered by conducting dredging, diving, anchoring, fishing or other activities while the PATRIOT sits on the sea floor. This action is also necessary to assist in providing a safe work environment for those conducting the salvage operation. This temporary rulemaking is needed to protect the environment, the commercial fishing industry, salvage operators and the general public from potential hazards associated with the sunken vessel and from potential hazards associated with the salvage of the vessel.

DATES: This rule is effective from May 20, 2009 through June 10, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0424 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0424 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the following location: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management Division, telephone 617–223–5160, e-mail *Eldridge.C.McFadden@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because initial immediate action was needed to protect the public from the hazards posed by an unknown underwater object located in Massachusetts Bay. This object was later identified as the F/V PATRIOT, located in approximately 95 feet of water 17 miles northeast of Scituate, Massachusetts. This rule replaces the existing safety zone set to May 20, 2009, to ensure, to the extent practicable, the immediate, continued protections for the environment, the commercial fishing industry, salvage operators and the general public from the potential hazards associated with the salvage of the F/V PATRIOT. The loss of the F/V PATRIOT created significant interest in the local fishing community and considerable media interest. Salvage of the F/V PATRIOT has the potential of attracting a variety of on-lookers who may be searching for unanswered questions or are just curious; operations also have the potential of generating considerable media interest. An uncontrolled gathering of vessels surrounding the location of salvage operations has the potential of creating an unsafe work environment during salvage operations. It would be contrary to the public interest for the existing safety zone to lapse on the eve of such operations.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On January 3, 2009, the F/V PATRIOT, a 54-foot steel-hull boat, sank with the loss of two crewmembers onboard. The vessel was reported to

have an estimated 5,000 gallons of fuel onboard. There were no survivors and the exact position of the vessel was not immediately known. On January 8, 2009, the Coast Guard established a temporary safety zone around a reported underwater object believed to be the F/V PATRIOT, located in Massachusetts Bay approximately 17 miles northeast of Scituate, Massachusetts, in position 42°24′27.34″ N., 70°27′17.23″ W.

On January 23, 2009, underwater exploratory operations with photographic equipment confirmed that the object was the F/V PATRIOT. The owners of the vessel intend to conduct dive and salvage operations on the vessel. The Coast Guard is implementing this safety zone to surround the F/V PATRIOT and the salvage equipment transporting it from its current resting place to its future berth.

Discussion of Rule

This regulation creates a temporary safety zone around the F/V PATRIOT currently located in Massachusetts Bay, Massachusetts, 17 miles northeast of Scituate, Massachusetts. The safety zone will protect the vessel until it is salvaged and subsequently transported to the shore, at which time the safety zone will no longer be enforced. This regulation is necessary to allow the owners of the F/V PATRIOT to safely conduct salvage operations and transport the vessel to shore. This safety zone is in place to protect the public from the hazards associated with a salvage operation. The zone extends for 500 yards, in all directions, from the F/V PATRIOT, currently in approximate position 42°24′27.34″ N, 70°27′17.23″ W. Once F/V PATRIOT has been re-floated, the safety zone shall remain in effect, reduce in size to 50 yards and move with the vessel until the vessel is safely moored.

This action is intended to prohibit vessels and persons from entering, transiting, anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston, Massachusetts. Public notifications about this safety zone will be made through broadcast and local notice to mariners. Marine traffic may transit safely in surrounding areas, but are restricted from entering the area delineated above.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to the limited area and duration covered by this safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

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

This regulation is not significant regulatory action as it encompasses a sunken fishing vessel and the immediate area surrounding it.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the waterway covered by the safety zone. This rule will not have a significant impact on a substantial number of small entities for the following reasons: The area this rule is affecting is very small and there is plenty of water in the area for vessels to transit around.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves a temporary safety zone which may last longer than a week and is not an emergency situation. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T01–0424, to read as follows:

§ 165.T01–0424 Safety Zone: F/V PATRIOT, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500-yard radius of the F/V PATRIOT while located in its currently approximate position of 42°24′27″ N, 070°27′17″ W. When the vessel is re-floated during salvage operations, the safety zone will reduce to a 50-yard radius and move with the F/V PATRIOT until safely moored.

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

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

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

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

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) Enforcement Period. This rule will be enforced from May 20, 2009, until midnight June 10, 2009.

Dated: May 20, 2009.

John N. Healey,

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

[FR Doc. E9–12706 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1119; MB Docket No. 09–46; RM–11524]

Television Broadcasting Services; Buffalo, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by New York Television, Inc., the licensee of station WNYO–DT, requesting the substitution of DTV channel 49 for its assigned post-transition DTV channel 34 at Buffalo, New York.

DATES: This rule is effective June 2, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–46, adopted May 20, 2009, and released May 21, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents

will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New York, is amended by adding DTV channel 49 and removing DTV channel 34 at Buffalo.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–12833 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1099; MB Docket No. 08–102; RM–11439]

Television Broadcasting Services; South Bend, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by LeSEA Broadcasting of South Bend, Inc., the licensee of WHME–DT, to substitute DTV channel 46 for its assigned post-transition DTV channel 48 at South Bend, Indiana.

DATES: This rule is effective June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–102, adopted May 18, 2009, and released May 20, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Indiana, is amended by adding DTV channel 46 and removing DTV channel 48 at South Bend.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–12838 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 08–253; FCC 09–36]

Replacement Digital Television Translator Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of six months, the information collection requirement associated with a previously published rule document, and that this rule will take effect on June 19, 2009. On May 20, 2009, the Commission published the summary document of the Report and Order, *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations,* MB Docket No. 08–253, FCC 09–36. The Ordering Clause of the Report and Order stated that the Commission would publish notification in the **Federal Register** announcing when OMB

approval for this rule section which contains an information collection requirement has been received and when the revised rule will take effect. This notice is consistent with the statement in the Report and Order.

DATES: The effective date for § 74.787(a)(5)(i), added at 74 FR 23650, May 20, 2009, is June 19, 2009.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Shaun Maher, *Shaun.Maher@fcc.gov,* of the Media Bureau, Video Division, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This document announces that, on May 21, 2009, OMB approved, for a period of six months, the information collection requirement contained in § 74.787(a)(5)(i) of the rules. The Commission publishes this notice to announce the effective date of this rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include OMB Control Numbers, 3060–0027 and 3060–0029, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on May 21, 2009, for the information collection requirement contained in the Commission's rules at 47 CFR 73.787(a)(5)(i).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–1086 and the total annual reporting burdens and costs for respondents for this information collection are as follows:

OMB Control Numbers: 3060–1086.

OMB Approval Date: May 21, 2009.

Expiration Date: November 30, 2009.

Title: Section 74.786, Digital Channel Assignments; Section 74.787, Digital Licensing; Section 74.790, Permissible Service of Digital TV Translator and LPTV Stations; Section 74.794, Digital Emissions, and Section 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 8,533 respondents; 34,790 responses.

Estimated Hours per Response: 0.50–4 hours.

Frequency of Response: Recordkeeping requirement; One-time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 55,542 hours.

Total Annual Cost: $95,767,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 301 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On May 8, 2009, the Commission adopted the Report and Order, *In the Matter of Amendments of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations;* MB Docket No. 08–253, FCC 09–36 (released May 8, 2009). In this Report and Order, the Commission created a new ''replacement'' digital television translator service to permit full-service television stations to continue to provide service to viewers within their analog coverage areas who have lost service as a result of those stations' digital transition. Replacement digital translators can be licensed solely on digital television channels 2 through 51 and with secondary frequency status. Unlike other television translator licenses, the replacement digital television translator license will be associated with the full-service station's main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Almost all other rules associated with television translator stations are applied to replacement digital television translators.

Moreover, the Report and Order adopts an information collection requirement contained in 47 CFR 74.787(a)(5)(i). 47 CFR 74.787(a)(5)(i) states that an application for a replacement digital television translator may be filed by a full-service television station that can demonstrate that a portion of its analog service area will not be served by its full, post-transition digital facilities. The service area of the replacement digital television translators shall be limited to only a demonstrated loss area. However, an applicant for a replacement digital television translator may propose a de minimis expansion of its full-service pre-transition analog service area upon demonstrating that it is necessary to replace its post-transition analog loss area.

Congress has mandated that after June 12, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. Therefore, this collection of information will allow full-power DTV stations to use replacement digital television translators to meet their statutory responsibilities and begin operations on their final, post-transition (digital) channels by their construction deadlines. Replacement digital television translators will provide DTV broadcasters with an important tool for providing optimum signal coverage to their pre-transition analog viewers. For some broadcasters, replacement digital television translators may offer the only option for continuing to provide over-the-air service to pre-transition analog viewers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–12836 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 104
Tuesday, June 2, 2009

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 894

RIN 3206–AL78

Changes in the Federal Employees Dental and Vision Insurance Program

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U. S. Office of Personnel Management (OPM) is issuing proposed regulations on changes in the Federal Employees Dental and Vision Insurance Program (FEDVIP). We are amending the regulations to authorize retroactive enrollment changes when an enrollee has lost his or her spouse through death or divorce or the enrollee's last eligible child dies, marries, or reaches age 22. We are also amending the regulations to add that an individual may enroll 31 days before the enrollee or an eligible family member loses other dental and/or vision coverage. We are also amending the regulations to clarify the reference to excluded positions in 5 U.S.C. 8901(1). We are also including in the regulations certain Senate restaurant employees who are employees of the Architect of the Capitol as individuals who are eligible to elect to continue enrollment in FEDVIP if they are eligible and elect to continue their retirement coverage.

DATES: OPM must receive comments on or before August 3, 2009.

ADDRESSES: Send written comments to Nataya I. Battle, Senior Policy Analyst, Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–3666; or deliver to OPM, Room 3415, 1900 E Street, NW., Washington, DC or FAX to (202) 606–0036.

Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Nataya Battle, (202) 606–1874, or e-mail at *nataya.battle@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2004, Public Law 108–496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first effective date of coverage was December 31, 2006. The existing regulations allow an enrollment change based on a Qualifying Life Event (QLE) only when the enrollee requests it during the period beginning 31 days before the QLE and ending 60 days after the QLE. The change in enrollment is effective the first day of the first pay period following the date of the request. If the enrollee has no more eligible family members and he or she misses the 60-day time limit, there is no provision that will allow for the change in enrollment to be made retroactive to the first day of the first pay period following the date the family member lost eligibility. Enrollees are being forced to pay for a family enrollment or a self plus one enrollment even though their family members are deceased or no longer eligible for coverage, until the next Open Season opportunity to change enrollment. This amendment will lift the deadline by which such an enrollee must change his or her enrollment and will allow the enrollment change to take effect retroactively when the enrollee has a self plus one enrollment and his or her family member dies or loses eligibility, through divorce or when the dependent child marries or reaches age 22. This amendment will also allow retroactive enrollment changes from a family enrollment that includes two family members to a self plus one enrollment if one of the family members loses eligibility (*i.e.,* when there is a death or divorce, or when a dependent child marries or reaches age 22).

When an eligible family member loses dental or vision coverage, the existing regulations allow the enrollee to increase his or her type of enrollment during the period beginning 31 days before the event and ending 60 days after the event. However, the regulations allow an employee who is not enrolled, and who loses his or her other dental or vision coverage, to enroll within 60 days after the event. This amendment will correct this inconsistency and allow an employee who loses other dental or vision coverage to enroll from 31 days before until 60 days after the event.

The existing regulations (5 CFR 894.302) state that excluded positions are described in 5 U.S.C. 8901(1)(I). This amendment will clarify that excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv).

Public Law 110–279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who is an employee of the Architect of the Capitol on the date of enactment and who accepts employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are revising the FEDVIP regulations to address continuation of coverage for these individuals.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects dental and vision benefits of Federal employees and annuitants.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and

recordkeeping requirements, Retirement.

John Berry,

Director, U.S. Office of Personnel Management.

Accordingly, OPM is amending 5 CFR part 894 as follows:

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION PROGRAM

1. The authority citation for part 894 is revised to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Public Law 110–279, 122 Stat. 2604.

Subpart C—Eligibility

2. Revise § 894.301 to read as follows

§ 894.301 Am I eligible to enroll in the FEDVIP?

You are eligible if—

(a) You meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position;

(b) You are an employee of the United States Postal Service or the District of Columbia courts;

(c)(1) You were employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern; and

(2) You accepted employment by the business concern and elected to continue your Federal retirement benefits and your FEDVIP coverage. You continue to be eligible for FEDVIP coverage as long as you remain employed by the business concern or its successor.

3. Revise § 894.302 introductory text to read as follows:

§ 894.302 What is an excluded position?

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

* * * * *

Subpart E—Enrollment and Changing Enrollment

4. Revise § 894.501(d) to read as follows:

§ 894.501 When may I enroll?

* * * * *

(d) From 31 days before you or an eligible family member loses other dental/vision coverage to 60 days after a QLE that allows you to enroll.

5. Revise § 894.510(c) and (d) to read as follows:

§ 894.510 When may I decrease my type of enrollment?

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

(i) A decrease in your self plus one enrollment;

(ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible family member; or

(iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible family members.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

(2) If you are making an enrollment change described in paragraph (c)(2) of this section, your change in enrollment is effective on the first day of the first pay period following the QLE on which the enrollment change is based.

* * * * *

[FR Doc. E9–12617 Filed 6–1–09; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI37

[NRC 2009–0014]

Incorporation by Reference of Regulatory Guide 1.84, Revision 35, and Regulatory Guide 1.147, Revision 16, Into 10 CFR 50.55a

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed rule.

SUMMARY: The NRC is proposing to amend its regulations to incorporate by reference the latest revisions of two regulatory guides (RG) that would approve new and revised code cases published by the American Society of Mechanical Engineers (ASME). These are RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 35, and RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 16. This action would allow the use of the code cases listed in these RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and inservice inspection (ISI) of nuclear power plant components. Concurrent with this action, the NRC is publishing a notice of the issuance and availability of the RGs in the **Federal Register**.

DATES: Submit comments by August 17, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RN 3150–AI37 in the subject line of your comments. 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.

Federal e Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0014. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail *Carol.Gallager@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the PDR Reference staff at 800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi or L. M. Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2905, e-mail *Manash.Bagchi@nrc.gov,* or 301–415–1423, e-mail *Mark.Padovan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and ISI of nuclear power plant components, and the *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code), which contains requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops ASME Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves and/or mandates the use of the ASME BPV and OM Code in 10 CFR 50.55a through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into, and mandated by, § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted above, ASME Code Cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55 to incorporate by reference NRC RGs listing approved ASME Code Cases which may be used as alternatives to the BPV Code and the OM Code. See 68 FR 40469 (July 8, 2003).

This rulemaking is the latest in a series of rulemakings which incorporate by reference new versions of several RGs identifying new and revised [1] ASME Code Cases which are approved for use, either unconditionally or with conditions. In developing these RGs, the NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in RGs. The RGs are revised periodically as new code cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into 10 CFR 50.55a. Currently, NRC RG 1.84, Revision 34, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III;'' RG 1.147, Revision 15, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;'' and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' are incorporated into the NRC's regulations at 10 CFR 50.55a, Codes and standards.

Description of NRC Approval of New and Amended ASME Code Cases

This proposed rule would incorporate by reference the latest revisions of the NRC RGs that list acceptable and conditionally acceptable ASME BPV Code Cases. RG 1.84, Revision 35, Draft Regulatory Guide (DG) 1191, would supersede the incorporation by reference of Revision 34; and RG 1.147, Revision 16, DG 1192, would supersede the incorporation by reference of Revision 15. RG 1192 dated June 2003 would not be revised because there have been no new OM Code Cases published by the ASME since the last NRC staff review.

The ASME Code Cases which are the subject of this rulemaking are the new revised Section III and Section XI Code Cases listed in Supplements 2 through 11 to the 2004 BPV Code, and Supplement 0 published with the 2007 Edition of the BPV Code (Supplement 0 also serves as Supplement 12 to the 2004 Edition) of the code. The NRC follows a three step process to determine acceptability of new and revised ASME Code Cases and the need for conditions on the uses of these Code Cases. This process was employed in the review of the ASME Code Cases which are the subject of this proposed rule. First, NRC staff actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised code cases. This includes a technical justification in support of each new or revised code case. Second, the NRC committee representatives distribute the code case and technical justification to other cognizant NRC staff to ensure an adequate technical review. Finally, the proposed NRC position on each code case is reviewed and approved by NRC management as part of the rulemaking amending 10 CFR 50.55a to incorporate by reference new revisions of the RGs listing the relevant ASME Code Cases and conditions on their use. This regulatory process, when considered together with the ASME's own process for development and approval of ASME Code Cases, provides reasonable assurances that the NRC approves for use only those new and revised ASME Code Cases (with conditions as necessary) which provide reasonable assurance of adequate protection to public health and safety and which do not have significant adverse impacts on the environment.

Code Cases Approved Unconditionally for Use

The NRC concluded, in accordance with the process for review of ASME Code Cases, that each of the ASME Code Cases listed in Table 1 is technically adequate and consistent with current NRC regulations.

TABLE 1

Code case No.	Supplement	Title
		Section III
N–4–12	4	Special Type 403 Modified Forgings or Bars, Class and CS, Section III, Division 1.
N–284–2	12	Metal Containment Shell Buckling Design Methods, Class MC, Section III, Division 1.
N–373–3	3	Alternative postweld heat treatment (PWHT) Time at Temperature for P–No. 5A or P–No. 5B Group 1 Material, Classes 1, 2, and 3 Section III, Division 1.
N–621–1	3	Ni-Cr-Mo Alloy Unified Numbering System (UNS) N06022) Weld Construction to 800 °F, Section III, Division 1.

[1] ASME Code Cases can be categorized as one of one of two types: new and revised. A new Code Case provides for the first time an alternative to specific ASME Code provisions or addresses a new need. A revised Code Case is a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the regulatory guides which have been incorporated by reference into 10 CFR 50.55a.

TABLE 1—Continued

Code case No.	Supplement	Title
N–699	8	Use of Titanium Grade 2 (UNS R50400) Tube and Bar, and Grade 1 (UNS R50250) Plate and Sheet for Class 1 Construction, Section III, Division 1.
N–725	4	Design Stress Values for UNS N06690 With Minimum Specified Yield Strength of 35 Ksi (240 Mpa), Classes 2 and 3 Components, Section III, Division 1.
N–727	9	Dissimilar Welding Using Continuous Drive Friction Welding for Reactor Vessel Control Rod Drive Mechanism (CRDM)/Control Element Drive Mechanism (CEDM) Nozzle to Flange/Adapter Welds, Class 1, Section III, Division 1.
N–732	5	Magnetic Particle Examination of Forgings for Construction, Section III, Division 1.
N–736	8	Use UNS S32050 Welded and Seamless Pipe and Tubing, Forgings, and Plates Conforming to SA–249/SA–249M, SA–479/SA–479M, and SA–240/SA–240M, and Grade CK35MN Castings Conforming to ASTM A 743–03 for Construction of Class 1, 2, and 3 Components, Section III, Division 1.
N–738	6	NDE of Full Penetration Butt Welds in Class 2 Supports, Section III, Division 1.
N–741	7	Use of 22Cr-5Ni-3Mo-N (Alloy UNS S32205 Austenitic/Ferritic Duplex Stainless Steel) Forgings, Plate, Welded and Seamless Pipe Tubing, and Fittings to SA–182, SA–240, SA–789, A 790–04a, SA–815, Classes 2 and 3, Section III, Division 1.
N–744	11	Use of Metric Units Boiler and Pressure Vessel Code, Section III, Division 1.
N–746	8	Use of 46Fe-24Ni-21Cr-6Mo-Cu-N (UNS N08367) Bolting Materials for Class 2 and 3 Components, Section III, Division 1.
N–756	12	Alternative Rules for Acceptability for Class 1 Valves, nominal pipe size (NPS) diameter nominelle (DN 25) and Smaller with Non-Welded End Connections Other than Flanges, Section III, Division III
N–759	11	Alternative Rules for Determining Allowable External Pressure and Compressive Stresses for Cylinders, Cones, Spheres, and Formed Heads, Section III, Division 1.
Section XI		
N–494–4	7	Pipe Specific Evaluation Procedures and Acceptance Criteria for Flaws in Piping that Exceed the Acceptance Standards, Section XI, Division 1.
N–496–2	2	Reaffirmed Helical-Coil Threaded Inserts, Section XI, Division 1.
N–666	9	Weld Overlay of Class 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.
N–686–1	12	Alternative Requirements for Visual Examinations VT–1, VT–2, and VT–3, Section XI, Division 1.
N–705	11	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N–706–1	12	Alternative Examination Requirements of Table IWB–2500–1 and Table IWC–2500–1 for Pressurized Water Reactor (PWR) Stainless Steel Residual and Regenerative Heat Exchangers, Section XI, Division 1.
N–712	2	Roll Expansion of Class 1 Control Rod Drive Bottom Head Penetrations in Boiling Water Reactors (BWR), Section XI, Division 1.
N–730	11	Class 1 Socket Weld Examinations, Section XI, Division 1.
N–731	5	Alternative Class 1 System Leakage Test Pressure Requirements, Section XI, Division 1.
N–733	6	Mitigation of Flaws in NPS 2 (DN 50) and Smaller Nozzles and Nozzle Partial Penetration Welds in Vessels and Piping by Use of a Mechanical Connection Modification, Section XI, Division 1.
N–735	11	Successive Inspection of Class 1 and 2 Piping Welds, Section XI, Division 1.
N–739	11	Alternative Qualification Requirements for Personnel Performing Class CC Concrete and Post-tensioning System Visual Examinations, Section XI, Division 1.
N–753	10	Vision Tests, Section XI, Division 1.

Code Case Approved for Use With Conditions

As a result of the NRC staff's review, the NRC determined that certain code cases were technically inadequate or required supplemental guidance. Accordingly, the NRC proposes to impose conditions upon the use of these code cases. These ASME Code Cases are included in DG–1191 (RG 1.84, in Table 2, and in DG–1192 (RG–1.147) in Table 2. The NRC's evaluation of the code cases and the reasons for the NRC's proposed conditions are discussed in the following paragraphs. Notations have been made to indicate the conditions duplicated from previous versions of the regulatory guides.

The NRC requests public comment on these code cases as part of this rulemaking. It should also be noted that the following paragraphs only address those code cases for which the NRC proposes to impose condition which are listed in the regulatory guides for the first time (*e.g.,* Code Case N–532–4, which is listed in Supplement 9, has already been approved in Revision 15 to RG 1.147).

4.5 Section III

Code Case N–570–1 [S8]

Type: Revised.

Title: Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and [Metal Cladding (MC)], Section III, Division 1.

Code Case N–570–1 references American National Standards Institute (ANSI)/American Institute of Steel Construction (AISC) N690–1994 s1, ''Supplement No. 1 to the Specification for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities.'' However, the AISC issued Supplement 2 on October 6, 2004. Supplement 2 supersedes Supplement 1.

The updated supplement (Supplement 2) is consistent with NRC positions and requirements for new reactor support design. Thus, the NRC is proposing to condition Code Case N–570–1 to require that ANSI/AISC N690–1994 s2, ''Supplement No. 2 to the Specification for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities,'' be used when this code case is implemented.

4.6 Section XI

Code Case N–416–4 [S1]

Type: Revised.

Title: Alternative Pressure Test Requirement for Welded Repairs or Installation of Replacement Items by Welding, Class 1, 2, and 3, Section XI, Division 1.

The NRC proposes to condition Code Case N–416–4 to require that nondestructive examination be performed for welded or brazed repairs and fabrication and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.

For certain welding repairs or replacements, the previous version of this code case (Code Case N–416–3) permitted a system leakage test to be performed in lieu of performing a hydrostatic pressure test provided that certain requirements are met. One of the requirements was that nondestructive examination (NDE) be performed on welded repairs, fabrication, and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.

This NDE requirement was removed when Code Case N–416–4 was issued. When Code Case N–416 was originally developed, the NRC agreed to the performance of system leakage testing in lieu of hydrostatic testing provided that NDE performed in conjunction with the repair met the requirements of the 1992 Edition of Section III. The reason for this stipulation is that some construction codes are less rigorous than others, depending on when the provisions were developed. The NRC believes that to justify the elimination of the NDE provision a hydrostatic pressure test would be required. It is the NRC's position that a system leakage pressure test does not provide an equivalent level of safety as a hydrostatic pressure test. The higher pressure of the hydrostatic pressure test would make any potential leakage more evident than if a system leakage test was performed, particularly in the case of smaller defects. In as much as the NRC believes that a hydrostatic pressure test would not be effective in this situation, the more rigorous NDE requirements of Section III must be performed (as is currently required by N–416–3).

As discussed above, the NDE provision is contained in Code Case N–416–3. Code Case N–416–3 was approved in Revision 14 of Regulatory Guide 1.147 (August 2005), which has already been implemented by licensees. Thus, requiring the performance of NDE after these repairs and replacements is not a new position and is merely the continuation of current practice. It should be noted that the NDE requirement was also removed from paragraph IWA–4540(a) of the 2003 Addenda to Section XI. The NRC imposed a condition similar to the one discussed above for Code Case N–416–3 in 10 CFR 50.55a on the use of IWA–4540(a) in the 2003 Addendum to Section XI.

Code Case N–504–4 [S10]

Type: Revised.

Title: Alternate Rules for Repair of Classes 1, 2, and 3 Austenitic Stainless Steel Piping, Section XI, Division 1.

Revision 3 to this code case was conditionally approved in Revision 15 to RG 1.147 to require that Section XI, Nonmandatory Appendix Q, ''Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments,'' must also be met. The NRC has determined that N–504–4 is acceptable with the same condition. Accordingly, the regulatory position has not changed.

Code Case N–638–4 [S11]

Type: Revised.

Title: Similar and Dissimilar Metal Welding Using Ambient Temperature Machine (GTAW) Temper Bead Technique, Section XI, Division 1.

The same conditions applied to the previous version of the code case (N–638–1) which was approved in Revision 15 to RG 1.147 (Revisions 2 and 3 to the code case were published by the ASME between regulatory guide cycles). Accordingly, the NRC's position has not changed.

Code Case N–661–1 [S7]

Type: Revised.

Title: Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1.

With regard to Code Case N–661–1, the NRC is proposing to retain conditions (a) and (c) of the following three conditions that were imposed on Code Case N–661 in RG 1.147, Revision 15:

(a) If the root cause of the degradation has not been determined, the repair is only acceptable for one cycle.

(b) Weld overlay repair of an area can only be performed once in the same location.

(c) When through-wall repairs are made by welding on surfaces that are wet or exposed to water, the weld overlay repair is only acceptable until the next refueling outage.

Code Case N–661–1 uses the term ''one fuel cycle.'' It is unclear what one fuel cycle actually infers if a repair is performed in mid-cycle. It may be interpreted that the repair is acceptable for the remainder of the current fuel cycle plus the subsequent fuel cycle. As can be seen from the conditions above, other terms such as ''one cycle'' have been used. To be unambiguous and ensure that a suitable re-inspection frequency has been established when the cause of the degradation is unknown or when the potential for hydrogen cracking exists due to the welding conditions, the term ''next refueling outage'' has been adopted in condition (a) rather than the term ''one cycle.'' There is no change needed regarding condition (c).

With regard to condition (b) on Code Case N–661, ASME made technical changes to the code case to address the NRC's concerns. The NRC finds the changes acceptable and thus condition (b) has been deleted relative to the implementation of Code Case N–661–1.

Code Case N–751 [S11]

Type: New.

Title: Pressure Testing of Containment Penetration Piping, Section XI, Division 1—When a 10 CFR [Part] 50, Appendix[–]J, Type[–]C, test is performed as an alternative to the requirements of IWA–4540 (IWA–4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, nondestructive examination must be performed in accordance with IWA–4540(a)(2) of the 2002 Addenda of Section XI.

The code case would allow an Appendix–J Type–C test to be performed as an alternative to the ASME Code requirement to pressure test piping that penetrates a containment vessel if the piping and isolation valves that are part of the containment system are Class 2 and the balance of the piping system is outside the scope of Section XI. However, in IWA–4540 of the 2003 addenda and later edition and addenda of the ASME Code, the NDE requirement associated with the system leakage test has been removed. For the plants that used the ASME B31.1 Code for construction, there was no requirement to volumetrically examine certain piping components during fabrication. Section XI requires NDE per the construction code as part of repair/replacement activities. Thus, if a B31.1 plant performs a repair to certain Class 2 or Class 3 piping, the construction code does not contain a provision for the NDE (as required by Section XI). Volumetric examination after repair or replacement is required to ensure high quality welds. A pressure test is only capable of determining the leak-

tightness of a weld at the time of the pressure test. Volumetric examination ensures high quality welds capable of performing their design function for the life of the component. Therefore, the NRC proposes a limitation on the use of Code Case N–751 so that when a 10 CFR Part 50, Appendix–J, Type–C test is performed as an alternative to the requirements of IWA–4540 (IWA–4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, NDE must be performed in accordance with IWA–4540(a)(2) of the 2002 Addenda of Section XI.

ASME Code Cases Not Approved for Use

ASME Code Cases which are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, ''ASME Code Cases Not Approved for Use.'' The ASME Code Cases which are not approved for use include those code cases on high-temperature gas-cooled reactors; certain requirements in Section III, Division 2, that are not endorsed by the NRC; liquid metal; and submerged spent fuel waste casks. RG 1.193 complements RGs 1.84 and 1.147. It should be noted that RG 1.193 is not part of this rulemaking as the NRC is not proposing to adopt any of the code cases listed in this RG. Also, the NRC is not seeking public comment on whether the NRC should approve any of the ASME Code Cases in RG 1.193. The RG is merely discussed as a matter of completeness.

Paragraph-by-Paragraph Discussion

Overall Considerations on the Use of ASME Code Cases

This rulemaking would amend 10 CFR 50.55a to incorporate by reference RG 1.84, Revision 35, which would supersede Revision 34, and RG 1.147, Revision 16, which would supersede Revision 15. The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the regulatory guides which are incorporated by reference into 10 CFR 50.55a as part of this rulemaking.

The endorsement of a code case in NRC RGs constitutes acceptance of its technical position for applications which are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant and licensee are responsible for ensuring that use of the code case does not conflict with regulatory requirements or licensee commitments. The code cases listed in the RGs are acceptable for use within the limits specified in the code case. If the RG states an NRC condition on the use of a code case, then the NRC condition supplements and does not supersede any condition(s) specified in the code case, unless otherwise stated in the NRC condition.

ASME Code Cases may be revised for many reasons, e.g., to incorporate operational examination and testing experience and to update material requirements based on research result. On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when an applicant or a licensee initially implements a code case, 10 CFR 50.55a requires that the applicant or the licensee implement the most recent version of that code case as listed in the RGs incorporated by reference. Code cases superseded by revision are no longer acceptable for new application unless otherwise indicated.

Section III of the ASME BPV Code applies only to new construction (i.e., the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III code case is implemented by an applicant or a licensee and a later version of the code case is incorporated by reference into § 50.55a and listed in the RGs, the applicant or the licensee may use either version of the code case (subject, however, to whatever change requirements apply to its licensing basis, *e.g.,* 10 CFR 50.59).

A licensee's ISI and OM IST programs must be updated every 10 years to the latest edition and addenda of Section XI and the OM Code, respectively, that were incorporated by reference to 10 CFR 50.55a and in effect 12 months prior to the start of the next inspection and testing interval. Licensees who were using a code case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a code case is revised by the ASME and approved for use by the NRC. Since code cases apply to specific editions and addenda and since code cases may be revised because they are no longer accurate or adequate, licensees choosing to continue using a code case during the subsequent ISI interval must implement the latest version incorporated by reference into 10 CFR 50.55a and listed in the RGs.

The ASME may annul code cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. If an applicant or a licensee applied a code case before it was listed as annulled or expired, the applicant or the licensee may continue to use the code case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI/IST update interval expires, after which the continued use of the code case is prohibited unless NRC approval is granted under 10 CFR 50.55a(a)(3). If a code case is incorporated by reference into 10 CFR 50.55a and later annulled by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate; the NRC will amend 10 CFR 50.55a and the relevant RG to remove the approval of the annulled code case. Applicants and licensees should not begin to implement such annulled code cases in advance of the rulemaking.

Concurrent with this action, the NRC is publishing in the **Federal Register** Notices of availability of these RGs listing acceptable ASME BPV Code Cases.

Paragraph 50.55a(b)

In paragraphs (b), and (b)(4) of 10 CFR 50.55a, the reference to the revision number for RG 1.84 would be changed from ''Revision 34'' to ''Revision 35.'' In paragraph (b)(5) of 10 CFR 50.55a, the reference to the revision number for RG 1.147 would be changed from ''Revision 15'' to ''Revision 16.'';

Paragraph 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii)

In paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii) of 10 CFR 50.55a, the reference to the revision number for RG 1.147 would be changed from ''Revision 15'' to ''Revision 16.''

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Public File Area O–1F21, Rockville, Maryland 20852.

Federal e-Rulemaking Portal. The Web site is located at *http://regulations.gov.*

The NRC's Public Electronic Reading Room. The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

TABLE 2

Document	PDR	Web	e-Reading room
Proposed Rule—Regulatory Analysis	X	X	ML082540559
RG 1.84, Revision 35 (DG1191)	X	X	ML080910389
RG 1.147, Revision 16 (DG1192)	X	X	ML080910245
RG 1.193, Revision 2 (DG1193)	X	X	ML080920854

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. In this action, the NRC is amending its regulations to incorporate by reference RGs that list ASME BPV Code Cases approved by the NRC. ASME Code Cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, are national consensus standards as defined in Public Law 104–113 and OMB Circular A–119. They are developed by bodies whose members (including the NRC and utilities) have broad and varied interests.

The NRC reviews each Section III and Section XI Code Case published by the ASME to ascertain whether it is consistent with the safe operation of nuclear power plants. Those code cases found to be generically acceptable are listed in the RGs that are incorporated by reference in 10 CFR 50.55a(b). Those that are found to be unacceptable are listed in RG 1.193, but licensees may still seek NRC's approval to apply these code cases through the relief request process permitted in 10 CFR 50.55a(a)(3). Other code cases, which the NRC finds to be conditionally acceptable, are also listed in the RGs that are incorporated by reference along with the conditions under which they may be applied. If the NRC did not conditionally accept ASME code cases, it would disapprove these code cases entirely. The effect would be that licensees would need to submit a larger number of relief requests, which would be an unnecessary additional burden for both the licensee and the NRC. For these reasons, the treatment of ASME BPV and OM Code Cases and any conditions proposed to be placed on them in this proposed rule does not conflict with any policy on agency use of consensus standards specified in OMB Circular A–119.

Finding of No Significant Environmental Impact: Environmental Assessment

This proposed action stems from the Commission's practice of incorporating by reference the RGs listing the most recent set of NRC-approved ASME code cases. The purpose of this proposed action is to allow licensees to use the code cases listed in the RGs as alternatives to requirements in the ASME BPV Code for the construction and ISI of nuclear power plant components. This proposed action is intended to advance the NRC's strategic goal of ensuring adequate protection of public health and safety and the environment. It also demonstrates the agency's commitment to participate in the national consensus standards process under the National Technology Transfer and Advancement Act of 1995, Public Law 104–113.

The National Environmental Policy Act (NEPA) requires Federal government agencies to study the impacts of their ''major Federal actions significantly affecting the quality of the human environment'' and prepare detailed statements on the environmental impacts of the action and alternatives to the action (United States Code, Vol. 42, Section 4332(C) [42 U.S.C. Sec. 4332(C)]; NEPA Sec. 102(C)).

The Commission has determined under NEPA, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51 that this proposed rule would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

As alternatives to the ASME Code, NRC-approved code cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this proposed action.

Paperwork Reduction Act Statement

This proposed rule increases the burden on licensees applying ASME Code Case N–730 to maintain repair records of the current control drive bottom head penetrations in BWRs for the life of the reactor vessel (10 CFR 50.55a). The public burden for this information collection is estimated to average 5 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The ASME Code Cases listed in the RGs to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV Code for design, construction, and ISI of specific structures, systems, and components used in nuclear power plants. Implementation of these code cases is not required. Licensees use NRC-approved ASME Code Cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code Case publication process without expending considerable additional resources. The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this proposed rulemaking and comparing the costs associated with each alternative. The regulatory analysis is available for inspection on public computers in the NRC PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Room O–1 F21. Copies of the regulatory analysis are also available to the public as indicated under the Availability of Documents heading in this preamble.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule would not impose a significant economical impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants are not ''small entities'' as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfitting Analysis

The provisions in this proposed rulemaking would allow licensees to voluntarily apply NRC-approved code cases, sometimes with conditions. The voluntary implementation of an approved code case would not constitute a backfit. Thus, the Commission finds that this proposed rule does not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1) and that a backfit rule is not required. Accordingly, a backfit analysis has not been prepared for this rulemaking.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC proposes to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841), Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by revising the introductory text of paragraphs (b), (b)(4), and (b)(5), and paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii) to read as follows:

§ 50.55a Codes and Standards.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. NRC Regulatory Guide 1.84, Revision 35, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III'' [temporarily designated DG–1191]; NRC Regulatory Guide 1.147, Revision 16, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1'' [temporarily designated DG–1192]; and Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These Regulatory Guides list ASME Code cases that the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6) of this section. Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Single copies of NRC Regulatory Guides 1.84, Revision 35; 1.147, Revision 16; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax to 301–415–2289; or by e-mail to *Distribution.Resource@nrc.gov.* Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal register/code of federal regulations/ibr locations.html.*

* * * * *

(4) *Design, Fabrication, and Materials Code Cases.* Applicants and licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 35 without prior NRC approval subject to the following:

* * * * *

(5) *In-service Inspection Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in Regulatory Guide 1.147, Revision 16, without prior NRC approval subject to the following:

* * * * *

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) (A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

* * * * *

(4) * * *

(i) Inservice examination of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section, subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 12th day of May 2009.

For the Nuclear Regulatory Commission

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–12751 Filed 6–1–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI60

[NRC–2009–0132]

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Holtec International HI–STORM 100 dry storage cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1014. Amendment No. 6 would modify the CoC to add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC–24, MPC–24E, MPC–24EF, MPC–32, and

MPC–32F models; and to correct legacy editorial issues in Appendices A and B Technical Specifications.

DATES: Comments on the proposed rule must be received on or before July 2, 2009.

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

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0132]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677.)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC) No. 1014, the proposed technical specifications (TS), and the preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML090290140.

The proposed CoC No. 1014, the proposed TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION:

For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment No. 6 to CoC No. 1014 and does not include other aspects of the HI–STORM 100 design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on August 17, 2009. However, if the NRC receives significant adverse comments on the direct final rule by July 2, 2009, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec.

10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 7th day of May 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–12618 Filed 6–1–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0465; Directorate Identifier 2007–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2005–078 [which corresponds to FAA AD 2006–02–06] to require the modification (Airbus modification 13023), defined in Airbus SB [service bulletin] A310–53–2124, to increase the service life of junctions of center box upper frame bases to upper fuselage arches. This structural modification falls within the scope of the work related to the extension of the service life of A310 aircraft and widespread fatigue damage evaluations.

The threshold timescales for accomplishment of the tasks as defined in SB A310–53–2124 were refined and reduced. * * *

* * * * *

The unsafe condition is fatigue cracking of the frame foot run-outs, which could lead to rupture of the frame foot and cracking in adjacent frames and skin, and which could result in reduced structural integrity of the fuselage. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 2, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0465; Directorate Identifier 2007–NM–244–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0212, dated December 4, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2005–078 [which corresponds to FAA AD 2006–02–06, Amendment 39–14458, 71 FR 3214, January 20, 2006] to require the modification (Airbus modification 13023), defined in Airbus SB [service bulletin] A310–53–2124, to increase the service life of junctions of center box upper frame bases to upper fuselage arches. This structural modification falls within the scope of the work related to the extension of the service life of A310 aircraft and widespread fatigue damage evaluations.

The threshold timescales for accomplishment of the tasks as defined in SB A310–53–2124 were refined and reduced. Consequently, EASA issued AD 2007–0238 to require compliance with Revision 1 of SB A310–53–2124 at the reduced compliance times, superseding (the requirements of) DGAC France AD F–2005–078. Subsequently, Airbus identified reference material that was erroneously introduced into Airbus SB A310–53–2124 Revision 1. As a result, the SB instructions could not be accomplished properly. Operators that tried to apply SB A310–53–2124 at Revision 1 had to contact Airbus; see also Airbus SBIT [service bulletin information telex] ref. 914.0135/08, dated 03 March 2008.

Consequently, AD 2007–0238 was revised to exclude reference to Airbus SB A310–53–2124 Revision 1 and to require accomplishment of the task(s) as described in the original SB A310–53–2124 instead, although retaining the reduced compliance times introduced by AD 2007–0238 at original issue. This new [EASA] AD is published to refer to Airbus SB A310–53–2124 Revision 02, the corrected version that is to be used to meet the requirements of this AD.

The unsafe condition is fatigue cracking of the frame foot run-outs, which could lead to rupture of the frame foot and cracking in adjacent frames and skin, and which could result in reduced structural integrity of the fuselage. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–53–2124, Revision 02, dated May 22, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 68 products of U.S. registry. We also estimate that it would take about 41 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $4,400 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $522,240, or $7,680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14458 (71 FR 3214, January 20, 2006) and adding the following new AD:

Airbus: Docket No. FAA–2009–0465; Directorate Identifier 2007–NM–244–AD.

Comments Due Date

(a) We must receive comments by July 2, 2009.

Affected ADs

(b) The proposed AD supersedes AD 2006–02–06, Amendment 39–14458.

Applicability

(c) This AD applies to Airbus Models A310–203, –204, –221, –222, –304, –322, –324 and –325 airplanes; all serial numbers; certificated in any category; except those airplanes on which Airbus Mandatory Service Bulletin A310–53–2124, dated April 4, 2005, has been accomplished, or Airbus Modification 13023 has been accomplished in production.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2005–078 [which corresponds to FAA AD 2006–02–06, Amendment 39–14458, 71 FR 3214, January 20, 2006] to require the modification (Airbus modification 13023), defined in Airbus SB [service bulletin] A310–53–2124, to increase the service life of junctions of center box upper frame bases to upper fuselage arches. This structural modification falls within the scope of the work related to the extension of the service life of A310 aircraft and widespread fatigue damage evaluations.

The threshold timescales for accomplishment of the tasks as defined in SB A310–53–2124 were refined and reduced. Consequently, EASA issued AD 2007–0238 to require compliance with Revision 1 of SB A310–53–2124 at the reduced compliance times, superseding (the requirements of) DGAC France AD F–2005–078. Subsequently, Airbus identified reference material that was erroneously introduced into Airbus SB A310–53–2124 Revision 1. As a result, the SB instructions could not be accomplished properly. Operators that tried to apply SB A310–53–2124 at Revision 1 had to contact Airbus; see also Airbus SBIT [service bulletin information telex] ref. 914.0135/08, dated 03 March 2008.

Consequently, AD 2007–0238 was revised to exclude reference to Airbus SB A310–53–2124 Revision 1 and to require accomplishment of the task(s) as described in the original SB A310–53–2124 instead, although retaining the reduced compliance times introduced by AD 2007–0238 at original issue. This new [EASA] AD is published to refer to Airbus SB A310–53–2124 Revision 02, the corrected version that is to be used to meet the requirements of this AD.

The unsafe condition is fatigue cracking of the frame foot run-outs, which could lead to rupture of the frame foot and cracking in adjacent frames and skin, and which could result in reduced structural integrity of the fuselage.

New Requirements of This AD: Actions and Compliance

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

(1) Except for airplanes identified in paragraph (f)(2) of this AD, at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, accomplish inspections by rotating probe for cracking of holes H1 through H29 on FR 43 through 46 inclusive, and inspections of holes H1 through H29 on FR 43 through 46 inclusive to determine the edge distance of the hole, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–53–2124, Revision 02, dated May 22, 2008 (''the service bulletin''). If no cracking is found and the edge distance is equal to or greater than the distance specified in the Accomplishment Instructions of the service bulletin, before further flight, do the cold expansion of the most fatigue sensitive fastener holes, as identified in the service bulletin.

(i) Inspect at the applicable time indicated in Table 1 of this AD. Airbus Model A310–304, –322, –324, and –325 airplanes with an average flight time (AFT) equal to or less than 3.17 flight hours are short range airplanes. Airbus Model A310–304, –322, –324, and –325 with an AFT exceeding 3.17 flight hours are long range airplanes.

(ii) Within 500 flight cycles or 800 flight hours after the effective date of this AD, whichever occurs first.

TABLE 1—COMPLIANCE TIMES

Affected airplanes	Inspection modification threshold, whichever occurs later	
Model A310–304, –322, –324 and –325 short range airplanes.	Prior to accumulation of 26,500 flight cycles or 74,300 flight hours since first flight of the airplane, whichever occurs first.	Within 3,000 flight cycles after the effective date of this AD, without exceeding 29,200 flight cycles or 81,800 flight hours since first flight, whichever occurs first.
Model A310–304, –322, –324 and –325 long range airplanes.	Prior to accumulation of 23,400 flight cycles or 117,100 flight hours since first flight of the airplane, whichever occurs first.	Within 3,000 flight cycles after the effective date of this AD, without exceeding 25,800 flight cycles or 129,000 flight hours since first flight, whichever occurs first.
Model A310–203, –204, –221, and A310–222 ..	Prior to accumulation of 23,400 flight cycles or 46,800 flight hours since first flight of the airplane, whichever occurs first.	Within 3,000 flight cycles after the effective date of this AD, without exceeding 28,800 flight cycles or 57,700 flight hours since first flight, whichever occurs first.

Note 1: To establish the average flight time, take the accumulated flight time (counted from the take-off up to the landing) and divide by the number of accumulated flight cycles. This gives the average flight time per flight cycle.

(2) For airplanes that have been modified before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A310–53–2124, Revision 01, dated May 3, 2007: Within 500 flight cycles or 800 flight hours after the effective date of this AD, whichever occurs first, contact Airbus and follow their corrective actions.

(3) If, during any inspection required by paragraph (f)(1) of this AD, any cracking is found or if the edge distance is less than the distance specified in Airbus Mandatory Service Bulletin A310–53–2124, Revision 02, dated May 22, 2008, before further flight, contact Airbus and follow their corrective actions.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI European Union Airworthiness Directive 2008–0212, dated December 4, 2008; and Airbus Mandatory Service Bulletin A310–53–2124, Revision 02, dated May 22, 2008; for related information.

Issued in Renton, Washington, on May 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12740 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0497; Directorate Identifier 2009–NM–019–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes; and Model ERJ 190–100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found the possibility of cracks developing in the ram air turbine (RAT) machined support, located in the forward compartment [zone 124] of [the] aircraft, due to downlock pin not [being] pull[ed] during its retraction. In case of RAT failure or malfunction, it will not provide electrical power to essential systems of [the] aircraft in [an] electrical emergency situation.

* * * * *

Lack of electrical power could result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 2, 2009.

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

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

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos–SP–BRASIL; *telephone:* +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; *e-mail: distrib@embraer.com.br; Internet: http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0497; Directorate Identifier 2009–NM–019–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2008–10–05 and 2008–10–06, both dated November 10, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of cracks developing in the ram air turbine (RAT) machined support, located in the forward compartment [zone 124] of [the] aircraft, due to downlock pin not [being] pull[ed] during its retraction. In case of RAT failure or malfunction, it will not provide electrical power to essential systems of [the] aircraft in [an] electrical emergency situation.

* * * * *

Lack of electrical power could result in reduced controllability of the airplane. Corrective actions include a detailed visual inspection for cracking of the RAT machined support, replacing the support with a new part if any crack is found, and reinforcing or replacing the support if no crack is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletins 170–53–0057, dated February 21, 2008; and 190–53–0027, dated February 18, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 163 products of U.S. registry. We also estimate that it would take about 60 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $7,535 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,010,605, or $12,335 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0497; Directorate Identifier 2009–NM–019–AD.

Comments Due Date

(a) We must receive comments by July 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000208 inclusive; and Model ERJ 190–100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes, serial numbers 19000002, 19000004, and 19000006 through 19000152 inclusive; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

It has been found the possibility of cracks developing in the ram air turbine (RAT) machined support, located in the forward compartment [zone 124] of [the] aircraft, due to downlock pin not [being] pull[ed] during its retraction. In case of RAT failure or malfunction, it will not provide electrical power to essential systems of [the] aircraft in [an] electrical emergency situation.

* * * * *

Lack of electrical power could result in reduced controllability of the airplane. Corrective actions include a detailed visual inspection for cracking of the RAT machined support, replacing the support with a new part if any crack is found, and reinforcing or replacing the support if no crack is found.

Actions and Compliance

(f) Unless already done, do the following actions. Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection for cracks in the RAT machined support, in accordance with the Accomplishment Instructions in Embraer Service Bulletin 170–53–0057, dated February 21, 2008; or Embraer Service Bulletin 190–53–0027, dated February 18, 2008; as applicable.

(1) If no crack is found, at the earlier of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, install reinforcements in the RAT machined support or replace the RAT machined support with a new support having part number 170–18676–405, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 170–53–0057, dated February 21, 2008; or Embraer Service Bulletin 190–53–0027, dated February 18, 2008; as applicable.

(i) Within 5,000 flight hours after accomplishing the inspection required by paragraph (f) of this AD.

(ii) Before further flight after the next two RAT deployments—which can be a flight deployment or a maintenance review board task procedure—after accomplishing the inspection required by paragraph (f) of this AD.

(2) If any cracking is found, before further flight, replace the RAT machined support with a new support having part number 170–18676–405, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 170–53–0057, dated February 21, 2008; or Embraer Service Bulletin 190–53–0027, dated February 18, 2008; as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(2) of this AD requires that you replace any cracked lug of the RAT machined support with a new support before further flight.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Airworthiness Directives 2008–10–05 and 2008–10–06, both dated November 10, 2008; Embraer Service Bulletin 170–53–0057, dated February 21, 2008; and Embraer Service Bulletin 190–53–0027, dated February 18, 2008; for related information.

Issued in Renton, Washington, on May 20, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12802 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0454; Directorate Identifier 2008–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. For all airplanes, this proposed AD would require installing new pump control and time delay relays, doing related investigative and corrective actions if necessary, and changing the wiring for the center and main fuel tanks override/jettison fuel pumps; and, for certain airplanes, installing new relays and wiring for the horizontal stabilizer override/jettison fuel pumps. This proposed AD would also require a revision to the maintenance program to incorporate Airworthiness Limitation No. 28–AWL–24 and No. 28–AWL–26. For certain airplanes, this proposed AD would also require installing an automatic shutoff system for the horizontal stabilizer tank fuel pumps and installing a new integrated display system. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent uncommanded operation of certain override/jettison pumps which could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 17, 2009.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6506; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0454; Directorate Identifier 2008–NM–156–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the

service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Safety assessments conducted by Boeing indicate that there is a risk of an ignition source in the main and center fuel tanks for Model 747–400, 747–400D, and 747–400F series airplanes, and in the horizontal stabilizer fuel tanks of Model 747–400 series airplanes, if the override/jettison pump continues to run for an extended time after the fuel level goes below the pump inlet. The pump is normally commanded off if the fuel level goes below the pump inlet, but if a single failure in the pump control circuitry occurs, a pump can continue to run after it is commanded off. Uncommanded operation of certain override/jettison pumps could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Other Related Rulemaking

Installing a new integrated display system (IDS) in accordance with Boeing Service Bulletin 747–31–2376, 747–31–2377, or 747–31–2378, all dated September 5, 2006, as applicable, would provide an acceptable substitute for complying with certain paragraphs of the ADs listed below.

- Paragraph E. of AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990). That AD applies to all Model 747 series airplanes and requires, among other actions, installing a system to provide visual warning signals to alert flightcrew members and ground crew personnel of certain incorrect indications.
- Paragraph (b) of AD 91–13–10 R1, amendment 39–8158 (57 FR 2446, January 22, 1992). That AD applies to certain Boeing Model 747 and 767 series airplanes and requires, among other actions, replacing the engine indicating and crew alerting system (EICAS) computers.
- Paragraph (d)(1) of AD 96–07–09, amendment 39–9558 (61 FR 14608, April 3, 1996). That AD applies to all Boeing Model 747–400, 757, and 767 series airplanes and requires, among other actions, installing an upgraded EICAS computer that provides ''advisory'' messages to the flightcrew to indicate an impending engine fuel filter bypass condition for each engine.
- Paragraph (a)(3)(iii) of AD 2000–02–22, amendment 39–11540 (65 FR 5222, February 3, 2000). That AD applies to certain Boeing Model 747–400 series airplanes and requires, among other actions, modifying the IDS software.
- Paragraph (a)(2)(ii) of AD 2000–12–21, amendment 39–11799 (65 FR 39079, June 23, 2000). [A correction of that AD was published in the **Federal Register** on July 18, 2000 (65 FR 44432).] That AD requires, among other actions, modifying the IDS software.
- Paragraph (d)(2)(iv) of AD 2003–16–16, amendment 39–13269 (68 FR 51439, August 27, 2003). That AD applies to certain Boeing Model 747–400 series airplanes and requires, among other actions, installing new IDS software in six integrated display units and three electronic flight information (EFI)/EICAS interface units.
- Paragraph (d)(1) of AD 2004–10–05, amendment 39–13635 (69 FR 28052, May 18, 2004). That AD applies to certain Boeing Model 747–400, 747–400D, 747–400F, 757–200, 757–200PF, 757–200CB, 767–200, 767–300, and 767–300F series airplanes. That AD requires, among other actions for Model 747–400, –400D, and –400F series airplanes, replacing the three EFIS/EICAS interface units (EIU), installing new software in the integrated display units (IDUs) and EIUs, replacing certain central maintenance computers (CMCs), and installing new software in the CMCs.

For airplanes with a horizontal stabilizer fuel tank and with horizontal stabilizer tank fuel pump auto-shutoff installed, installing a new IDS in accordance with Boeing Service Bulletin 747–31–2376, 747–31–2377, or 747–31–2378, all dated September 5, 2006, as applicable, would provide an acceptable method for complying with certain paragraphs of the ADs listed below, provided the certificate limitations enclosed with FAA Letter 140S–06–343, dated November 17, 2006, are incorporated into the limitations section of the applicable airplane flight manual (AFM) revision specified in the applicable AD.

- Paragraph (a) of AD 2001–12–21, amendment 12777 (66 FR 33170, June 21, 2001). That AD applies to all Boeing Model 747 series airplanes and requires, among other actions, revising the Limitations Section of the AFM to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight.
- Paragraph (a) of AD 2001–21–07, amendment 39–12478 (66 FR 54652, October 30, 2001). That AD applies to certain Boeing Model 747 series airplanes and requires, among other actions, revising the AFM to specify the amount of fuel necessary for operating the override/jettison fuel pumps, and to specify not resetting the circuit breakers for the override/jettison fuel pumps if they are tripped.
- Paragraph (c)(2) of AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002). That AD applies to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes. That AD requires, among other actions, revising the AFM

to advise the flightcrew of certain operating restrictions for maintaining minimum fuel levels.

• Paragraph (a) of AD 2002–24–52, amendment 39–12993 (68 FR 14, January 2, 2003). That AD applies to all Boeing Model 747–400, –400D, and –400 F series airplanes and requires, among other actions, revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center wing fuel tank, and to prohibit the use of the horizontal stabilizer fuel tank.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–28A2280, dated August 7, 2008. This service bulletin describes procedures for installing new pump control and time delay relays, doing related investigative and corrective actions if necessary, and changing the wiring for the center and main fuel tanks override/jettison fuel pumps. The related investigative and corrective actions include doing a general visual inspection for corrosion of the ground stud assembly during the installation of the P914 relay panel and cleaning or replacing the ground stud assembly if necessary. Boeing Alert Service Bulletin 747–28A2280 specifies that the installation of a new integrated display system (IDS), as described in the following service bulletins, must be done before or at the same time as the actions in the alert service bulletin:

• Boeing Service Bulletin 747–31–2376, dated September 5, 2006, for Model 747–400, and –400F series airplanes that have General Electric engines, except for airplanes having variable numbers (V/Ns) RL429, RL430, RL473, RL511, and RL521, which received new software in production.

• Boeing Service Bulletin 747–31–2377, dated September 5, 2006, for Model 747–400, and –400F series airplanes that have Pratt & Whitney engines, except for airplanes having V/Ns RL456, RL492, and RL502, which received new software in production.

• Boeing Service Bulletin 747–31–2378, dated September 5, 2006, for Model 747–400, –400D, and –400F series airplanes that have Rolls Royce engines.

We have also reviewed Boeing Alert Service Bulletin 747–28A2281, dated December 13, 2007, for Model 747–400 series airplanes. This service bulletin describes procedures for installing new relays and wiring in the horizontal stabilizer override/jettison fuel pumps. Boeing Alert Service Bulletin 747–28A2281 specifies that the installation of a new automatic shutoff system for the horizontal stabilizer tank (HST) fuel pumps, as described in the following service bulletin, must be done before or at the same time as the actions in the alert service bulletin: Boeing Service Bulletin 747–28A2262, Revision 1, dated May 8, 2008, for Model 747–400 series airplanes, except for airplanes having V/Ns RM403, RM441, RM442, RM443, and RM445.

We have also reviewed Section 9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' Boeing 747–400 Maintenance Planning (MPD) Data Document D621U400–9, Revision April 2008 (hereafter referred to as ''Document D621U400–9''). Sub-section D of Document D621U400–9 describes AWLs for fuel tank systems. Sub-section D of Document D621U400–9 includes the following fuel system AWLs:

• AWL No. 28–AWL–24, which is a repetitive functional test to verify continued functionality of the automatic shutoff system for the fuel boost pump of the HST. This AWL applies to Model 747–400 airplanes, line numbers (L/Ns) 1343 and subsequent, and those that have been modified in accordance with Boeing Service Bulletin 747–28A2262.

• AWL No. 28–AWL–26, which is a repetitive operational test to verify the continued functionality of the uncommanded on system for the override/jettison pump of the main 2 and main 3 fuel tanks. This AWL applies to Model 747–400, –400D, and –400F airplanes, L/Ns 1380 and subsequent, and those that have been modified in accordance with Boeing Alert Service Bulletin 747–28A2280.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require, for all airplanes installing new pump control and time delay relays, doing related investigative and corrective actions if necessary, and changing the wiring for the center and main fuel tanks override/jettison fuel pumps; and, for certain airplanes, installing new relays and wiring for the horizontal stabilizer override/jettison fuel pumps. This proposed AD would also require a revision to the maintenance program to incorporate Airworthiness Limitation No. 28–AWL–24 and No. 28–AWL–26. For certain airplanes, this proposed AD would also require installing an automatic shutoff system for the horizontal stabilizer tank fuel pumps and installing a new integrated display system.

Costs of Compliance

We estimate that this proposed AD would affect 102 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installing relays/changing wiring for center and main fuel tanks.	375 to 394	$65,015 to $65,451.	$95,015 to $96,971.	102	$9,691,530 to $9,891,042.
Installing a new IDS and revising the AFM when done (prior/concurrent action).	2 to 3	$0	Up to $240	Up to 102	Up to $24,480.
Installing relays and wiring for horizontal stabilizer tank (HST).	73 to 79	$0	$5,840 to $6,320.	74	$432,160 to $467,680.
Installing a new automatic shutoff for the HST.	44	$4,112	$7,632	74	$564,768.
Revising the maintenance program	1	$0	$80	102	$8,160.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2009–0454; Directorate Identifier 2008–NM–156–AD.

Comments Due Date

(a) We must receive comments by July 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletins 747–28A2280, dated August 7, 2008, and 747–28A2281, dated December 13, 2007.

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

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent uncommanded operation of certain override/jettison pumps which could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Installations and Wiring Changes

(g) Within 60 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For Model 747–400, –400D, and –400F series airplanes: Install new pump control and time delay relays and do related investigative and all applicable corrective actions, and change the wiring for the center and main fuel tanks override/jettison fuel pumps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2280, dated August 7, 2008. Do all related investigative and applicable corrective actions before further flight.

(2) For Model 747–400 series airplanes: Install new relays and wiring for the horizontal stabilizer override/jettison fuel pumps in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2281, dated December 13, 2007.

Prior/Concurrent Requirements

(h) Prior to or concurrently with the actions required by paragraph (g) of this AD, do the applicable actions in paragraphs (h)(1) and (h)(2) of this AD.

(1) For Model 747–400, –400D, and –400F series airplanes identified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(iii) of this AD: Install a new integrated display system (IDS) in accordance with the Accomplishment Instructions of the applicable service bulletin listed in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD.

(i) For Model 747–400, –400D, and –400F series airplanes that have General Electric engines except airplanes having variable numbers (V/Ns) RL429, RL430, RL473, RL511, and RL521: Boeing Service Bulletin 747–31–2376, dated September 5, 2006.

(ii) For Model 747–400 and –400F series airplanes that have Pratt & Whitney engines except airplanes having V/Ns RL456, RL492, and RL502: Boeing Service Bulletin 747–31–2377, dated September 5, 2006.

(iii) For Model 747–400 and –400F series airplanes that have Rolls Royce engines: Boeing Service Bulletin 747–31–2378, dated September 5, 2006.

(2) For Model 747–400 series airplanes except V/Ns RM403, RM441 through RM443 inclusive, and RM445: Install a new automatic shutoff system for the horizontal stabilizer tank (HST) fuel pumps in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2262, Revision 1, dated May 8, 2008. Installations accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 747–28A2262, dated March 15, 2007, are acceptable for compliance with the installation required by this paragraph.

Maintenance Program Revision

(i) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating Airworthiness Limitation (AWL) No. 28–AWL–24 and No. 28–AWL–26 of Section 9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' Boeing 747–400 Maintenance Planning (MPD) Data Document D621U400–9, Revision April 2008. The inspection interval for AWL No. 28–AWL–24 and AWL No. 28–AWL–26 starts on the date the modification is incorporated.

No Alternative Inspections or Inspection Intervals

(j) After accomplishing the action specified in paragraph (i) of this AD, no alternative actions or intervals may be used unless the inspections or inspection intervals are approved as an AMOC in accordance with the procedures specified in paragraph (m) of this AD.

Acceptable Action for Certain ADs

(k) For Model 747–400, –400D, and –400F series airplanes: Installing a new IDS in accordance with paragraph (h)(1) of this AD is an acceptable method of compliance for the action in the applicable AD paragraph listed in Table 1 of this AD.

TABLE 1—ACTIONS FOR WHICH PARAGRAPH (H)(1) OF THIS AD IS AN ACCEPTABLE METHOD OF COMPLIANCE (NO CERTIFICATE LIMITATIONS)

The action in—	Of—
(1) Paragraph E	AD 90–09–06, amendment 39–6581.
(2) Paragraph (b)	AD 91–13–10 R1, amendment 39–8158.
(3) Paragraph (d)(1)	AD 96–07–09, amendment 39–9558.
(4) Paragraph (a)(3)(iii)	AD 2000–02–22, amendment 39–11540.
(5) Paragraph (a)(2)(ii)	AD 2000–12–21, amendment 39–11799.
(6) Paragraph (d)(2)(iv)	AD 2003–16–16, amendment 39–13269.
(7) Paragraph (d)(1)	AD 2004–10–05, amendment 39–13635.

(l) For Model 747–400, –400D, and –400F series airplanes with a horizontal stabilizer fuel tank and with horizontal stabilizer tank fuel pump auto-shutoff installed: Installing a new IDS in accordance with paragraph (h)(1) of this AD is an acceptable method of compliance for the action in the applicable AD paragraph listed in Table 2 of this AD, provided the certificate limitations included in the following statement are incorporated into the Limitations Section of the applicable airplane flight manual (AFM) in place of the certificate limitation required by the AFM revision specified in the applicable AD listed in Table 2 of this AD. This may be done by inserting a copy of this AD in the AFM.

''Certificate Limitations

Center Wing Tank

The center wing tank (CWT) fuel quantity indication system must be operative to dispatch with CWT mission fuel.

The CWT must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected ON during takeoff.

If the FUEL LOW CTR L or R message is displayed, both CWT override/jettison pump(s) must be selected OFF.

If the FUEL PRESS CTR L or R message is displayed, the corresponding CWT override/jettison pump must be selected OFF.

Horizontal Stabilizer Tank

The following additional limitations must be followed if the horizontal stabilizer tank is fueled and used:

The horizontal stabilizer tank (HST) fuel quantity indication system must be operative to dispatch with HST mission fuel.

If either the FUEL PMP STB L or R message is displayed while on the ground, both HST pumps must be selected OFF.

If either the FUEL PRES STB L or R message is displayed, both HST pumps must be selected OFF.

Defueling

Prior to defueling any fuel tanks, perform a lamp test of the respective Fuel Pump Low Pressure indication lights. When defueling, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to OFF at the first indication of fuel pump low pressure. When defueling with passengers on board, fuel pump switches must be selected OFF at or above approximately 7,000 pounds (3,200 kilograms) for the center wing tank, 3,000 pounds (1,400 kilograms) for main tanks, and 2,100 pounds (1,000 kilograms) for the horizontal stabilizer tank. (These requirements apply for defueling or transferring between tanks.)

Warnings and Notes Applicable to All Fuel Operations

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT and HST pump switches from ON to OFF to ON with any continuous low pressure indication present.

Note

There is no change to the maximum zero fuel gross weight found in the airplane flight manual.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected ON and all CWT fuel may be used.

Note

In a low fuel situation, both HST transfer pumps may be selected ON and all HST fuel may be used.

Note

The CWT and the HST may be emptied normally during an emergency.

Note

The limitations contained in these certificate limitations supersede any conflicting basic airplane flight manual limitations.''

Note 2: When a statement identical to that in paragraph (l) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Note 3: The certificate limitations in paragraph (l) of this AD are also included as an enclosure to FAA Letter 140S–06–343, dated November 17, 2006.

TABLE 2—ACTIONS FOR WHICH PARAGRAPH (H)(1) OF THIS AD IS AN ACCEPTABLE METHOD OF COMPLIANCE (WITH CERTIFICATE LIMITATIONS)

The action in—	Of—
(1) Paragraph (a)	AD 2001–12–21, amendment 39–12277.
(2) Paragraph (a)	AD 2001–21–07, amendment 39–12478.
(3) Paragraph (c)(2)	AD 2002–19–52, amendment 39–12900.
(4) Paragraph (a)	AD 2002–24–52, amendment 39–12993.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6506; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance

time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12742 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0496; Directorate Identifier 2008–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.27 Mark 050 and F.28 Mark 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Several incidents have been reported where an electrical burning smell was noted in the cockpit, originating from the Electrical Power Centre. Troubleshooting revealed a partly molten terminal, which normally attaches a wire or bus bar to a stud of an Electrical Power Contactor, Part Number (P/N) SG02206. Furthermore, heat damage to the contactor stud itself was found. * * * * * * * * *

This condition, if not corrected, could lead to further cases of overheating of terminals and studs of Electrical Power Contactors P/N SG02206, possibly resulting in the loss of electrical power systems, electrical arcing and fire/smoke in the cockpit.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 2, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Power Systems, 1555 Corporate Woods Parkway, Uniontown, Ohio 44685–8799; telephone 330–487–2007; fax 330–487–1902; e-mail *twinsburg.techpubs@goodrich.com*; Internet *http://www.goodrich.com/TechPubs.*

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0496; Directorate Identifier 2008–NM–139–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0091, dated May 13, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several incidents have been reported where an electrical burning smell was noted in the cockpit, originating from the Electrical Power Centre. Troubleshooting revealed a partly molten terminal, which normally attaches a wire or bus bar to a stud of an Electrical Power Contactor, Part Number (P/N) SG02206. Furthermore, heat damage to the contactor stud itself was found. Material investigation revealed that the terminal, which was attached to the stud, was not properly torque tightened when the incident occurred. Loss of torque is considered to have occurred during operation, for reasons not fully understood. Further loosening may have taken place in-service under influence of vibration. As a result, poor contact caused electrical arcing during which extremely high temperatures were developed, leading to partial melting of the terminal.

Investigation of some other burned contactors revealed evidence (flat spring lock washer) of a fully torqued terminal/stud connection when the overheating occurred. The exact cause for the increase in temperature in the contactor and the terminal/stud could not be determined. However, it could not be excluded that an increase of the temperature inside the contactor could lead to reduction of the reliability of the contactor stud/terminal connection due to loss of lock washer tension. The affected Electrical Power Contactor is used on several locations in the electrical power system, i.e. Generator Line Contactor (GLC), Bus Tie Contactor (BTC), Auxiliary Power Contactor (APC) and External Power Contactor (EPC).

This condition, if not corrected, could lead to further cases of overheating of terminals and studs of Electrical Power Contactors P/N SG02206, possibly resulting in the loss of electrical power systems, electrical arcing and fire/smoke in the cockpit.

For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the current nut and spring washer of the standard contactor P/N SG02206 with a new self-locking nut.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Goodrich Power Systems has issued Service Bulletin SG02206–24–01, dated March 4, 2008. Fokker Services B.V. has issued the service bulletins identified in the following table.

TABLE—SERVICE INFORMATION

Service bulletin	Date
Fokker Service Bulletin SBF50–24–030, including the drawings identified in the subsequent table, ''Table—Drawings Included in Fokker Service Bulletin SBF50–24–30''.	November 6, 2003.
Fokker Service Bulletin SBF50–24–031	January 29, 2008.
Fokker Service Bulletin SBF100–24–037, including Manual Change Notification—Maintenance Documentation MCNM F100–076, dated October 2, 2003, and including the drawings identified in the subsequent table, ''Table—Drawings Included in Fokker Service Bulletin SBF100–24–037''.	October 2, 2003.
Fokker Service Bulletin SBF100–24–041	January 29, 2008.

TABLE—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF50–24–030

Fokker drawing—	Sheet—	Issue—	Dated—
W7980–236	02	H	August 1, 2003.
W7980–253	40	BK	September 17, 2003.
W7980–253	41	BK	September 17, 2003.
W7980–253	42	BK	September 17, 2003.
W7980–253	43	BK	September 17, 2003.
W7980–253	44	BL	September 17, 2003.
W7980–253	45	BK	September 17, 2003.
W7980–253	46	BL	September 17, 2003.
W7980–253	47	BK	September 17, 2003.
W7980–253	48	BK	September 17, 2003.
W7980–253	49	BL	September 17, 2003.
W7980–253	50	BL	September 17, 2003.
W7980–253	51	BL	September 17, 2003.
W7980–253	52	BL	September 17, 2003.
W7980–253	53	BL	September 17, 2003.
W7980–253	54	BK	September 17, 2003.
W7980–253	55	BL	September 17, 2003.
W7980–253	56	BL	September 17, 2003.
W7980–253	57	BK	September 17, 2003.
W7980–253	58	BL	September 17, 2003.
W7980–253	59	BK	September 17, 2003.
W7980–253	60	BK	September 24, 2003.
W7980–253	61	BK	September 24, 2003.
W7980–253	62	BK	September 24, 2003.
W7980–253	63	BL	September 24, 2003.
W7980–253	64	BK	September 24, 2003.
W7980–253	65	BL	September 24, 2003.
W7980–253	66	BK	September 24, 2003.

TABLE—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–24–037

Fokker drawing—	Sheet—	Issue—	Dated—
W43255	01	A	July 30, 2003.
W43255	02	Original	July 30, 2003.
W43255	03	A	August 4, 2003.
W43255	04	A	July 30, 2003.
W43255	05	Original	July 30, 2003.
W43255	06	A	July 30, 2003.
W43255	07	A	August 4, 2003.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information

referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 5 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $5,715 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $31,775, or $6,355 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2009–0496; Directorate Identifier 2008–NM–139–AD.

Comments Due Date

(a) We must receive comments by July 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.27 Mark 050 and F.28 Mark 0100 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

Several incidents have been reported where an electrical burning smell was noted in the cockpit, originating from the Electrical Power Centre. Troubleshooting revealed a partly molten terminal, which normally attaches a wire or bus bar to a stud of an Electrical Power Contactor, Part Number (P/N) SG02206. Furthermore, heat damage to the contactor stud itself was found. Material investigation revealed that the terminal, which was attached to the stud, was not properly torque tightened when the incident occurred. Loss of torque is considered to have occurred during operation, for reasons not fully understood. Further loosening may have taken place in-service under influence of vibration. As a result, poor contact caused electrical arcing during which extremely high temperatures were developed, leading to partial melting of the terminal.

Investigation of some other burned contactors revealed evidence (flat spring lock washer) of a fully torqued terminal/stud connection when the overheating occurred. The exact cause for the increase in temperature in the contactor and the terminal/stud could not be determined. However, it could not be excluded that an increase of the temperature inside the contactor could lead to reduction of the reliability of the contactor stud/terminal connection due to loss of lock washer tension. The affected Electrical Power Contactor is used on several locations in the electrical power system, i.e. Generator Line Contactor (GLC), Bus Tie Contactor (BTC), Auxiliary Power Contactor (APC) and External Power Contactor (EPC).

This condition, if not corrected, could lead to further cases of overheating of terminals and studs of Electrical Power Contactors P/N SG02206, possibly resulting in the loss of electrical power systems, electrical arcing and fire/smoke in the cockpit.

For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the current nut and spring washer of the standard contactor P/N SG02206 with a new self-locking nut.

Actions and Compliance

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

(1) Except as provided by paragraphs (f)(2) and (f)(3) of this AD: Within 36 months after the effective date of this AD, remove the standard nuts and lock washers from the contactors having part number (P/N) SG02206, install new self-locking nuts, and perform the applicable tests on the Alternating Current Bus Transfer system, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–24–041 or SBF50–24–031, both dated January 29, 2008, as applicable. If any test fails, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA (or its delegated agent).

(2) Accomplishment of paragraph (f)(1) of this AD is not required for Model F.28 Mark 0100 airplanes that have been modified in service in accordance with Fokker Service Bulletin SBF100–24–037, dated October 2, 2003. Accomplishment of Fokker Service Bulletin SBF100–24–037, dated October 2, 2003, within the compliance time specified in paragraph (f)(1) of this AD is considered an acceptable method of compliance with the requirements of paragraph (f)(1) of this AD.

(3) Accomplishment of paragraph (f)(1) of this AD is not required for Model F.27 Mark 050 airplanes that have been modified during production to incorporate Fokker Engineering Change Record (ECR) 51780, or for airplanes that have been modified in service in accordance with Fokker Service Bulletin SBF50–24–030, dated November 6, 2003. Accomplishment of Fokker Service Bulletin SBF50–24–030, dated November 6, 2003, within the compliance time specified in paragraph (f)(1) of this AD is considered an acceptable method of compliance with the requirements of paragraph (f)(1) of this AD.

(4) As of 36 months after the effective date of this AD, no person may install a contactor having P/N SG02206 on any airplane unless it has been modified in accordance with Goodrich Power Systems Service Bulletin SG02206–24–01, dated March 4, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI does not include a corrective action for airplanes on which the test required by paragraph (f)(1) of this AD fails. This AD requires the corrective action specified in paragraph (f)(1) of this AD.

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0091, dated May 13, 2008, and the service information listed in Tables 1, 2, and 3 of this AD for related information.

TABLE 1—SERVICE INFORMATION

Service bulletin	Date
Fokker Service Bulletin SBF50–24–030, including the drawings identified in Table 2 of this AD	November 6, 2003.
Fokker Service Bulletin SBF50–24–031	January 29, 2008.
Fokker Service Bulletin SBF100–24–037, including Manual Change Notification—Maintenance Documentation MCNM F100–076, dated October 2, 2003, and including the drawings identified in Table 3 of this AD.	October 2, 2003.
Fokker Service Bulletin SBF100–24–041	January 29, 2008.
Goodrich Power Systems Service Bulletin SG02206–24–01	March 4, 2008.

TABLE 2—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF50–24–030

Fokker drawing—	Sheet—	Issue—	Dated—
W7980–236	02	H	August 1, 2003.
W7980–253	40	BK	September 17, 2003.
W7980–253	41	BK	September 17, 2003.
W7980–253	42	BK	September 17, 2003.
W7980–253	43	BK	September 17, 2003.
W7980–253	44	BL	September 17, 2003.
W7980–253	45	BK	September 17, 2003.
W7980–253	46	BL	September 17, 2003.
W7980–253	47	BK	September 17, 2003.
W7980–253	48	BK	September 17, 2003.
W7980–253	49	BL	September 17, 2003.
W7980–253	50	BL	September 17, 2003.
W7980–253	51	BL	September 17, 2003.
W7980–253	52	BL	September 17, 2003.
W7980–253	53	BL	September 17, 2003.
W7980–253	54	BK	September 17, 2003.
W7980–253	55	BL	September 17, 2003.
W7980–253	56	BL	September 17, 2003.
W7980–253	57	BK	September 17, 2003.
W7980–253	58	BL	September 17, 2003.
W7980–253	59	BK	September 17, 2003.
W7980–253	60	BK	September 24, 2003.
W7980–253	61	BK	September 24, 2003.
W7980–253	62	BK	September 24, 2003.
W7980–253	63	BL	September 24, 2003.
W7980–253	64	BK	September 24, 2003.
W7980–253	65	BL	September 24, 2003.
W7980–253	66	BK	September 24, 2003.

TABLE 3—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–24–037

Fokker drawing—	Sheet—	Issue—	Dated—
W43255	01	A	July 30, 2003.
W43255	02	Original	July 30, 2003.
W43255	03	A	August 4, 2003.
W43255	04	A	July 30, 2003.
W43255	05	Original	July 30, 2003.
W43255	06	A	July 30, 2003.
W43255	07	A	August 4, 2003.

Issued in Renton, Washington, on May 20, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12803 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0251]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Baltimore Dragon Boat Challenge,'' a marine event to be held on the waters of the Patapsco River, Northwest Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patapsco River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before July 2, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0251 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0251), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–USCG–0251'' 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 comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0251 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

On August 22, 2009, Baltimore Dragon Boat Club, Inc. will sponsor Dragon Boat Races in the Patapsco River, Northwest Harbor at Baltimore, MD. The event will consist of approximately 15 teams rowing Chinese Dragon Boats in heats of 2 to 4 boats for a distance of 500-meters. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patapsco River, Northwest Harbor, Baltimore, MD. The regulations will be in effect from 6 a.m. to 7 p.m. on August 22, 2009. In the case of inclement weather this marine event may be postponed and rescheduled for 6 a.m. to 7 p.m. on August 29, 2009. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting a portion of the Patapsco River, Northwest Harbor during the event, this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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 Coast Guard Sector Baltimore, MD listed under **FOR FURTHER INFORMATON CONTACT** at the beginning of this rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023.1 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 that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule regulates vessel movement around a marine regatta on the navigable waters of the United States. This type of event is categorically excluded from further analysis under section 2.B.2, figure 2–1, paragraph (34)(h) of the Instruction, and we anticipate that this exclusion will apply to this event. 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 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35–T05–0251 to read as follows:

§ 100.35–T05–0251 Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Patapsco River, Northwest Harbor, Maryland, located near Locust Point, within an area bounded by the following lines of reference; bounded on the west by a line running along longitude 076°35′35″ W; bounded on the east by a line running along longitude 076°35′10″ W; bounded on the north by a line running along latitude 39°016′40″ N; and bounded on the south by the shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period: This section will be enforced as follows; (1) from 6 a.m. until 7 p.m. on August 22, 2009.

(2) In the case of inclement weather this marine event may be postponed and rescheduled for 6 a.m. to 7 p.m. on August 29, 2009.

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

Dated: May 20, 2009.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E9–12705 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0006]

RIN 1625—AA01

Seventh Coast Guard District, Captain of the Port Zone Jacksonville, Temporary Restricted Anchorage

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule

concerning the establishment of three temporary restricted anchorages with associated safety/security zones within the Captain of the Port Zone Jacksonville. The proposed rule is being withdrawn because the geographic locations of the proposed anchorage areas are beyond three nautical miles from the baseline of the territorial sea.

DATES: The proposed rule published at 73 FR 12925, March 11, 2008, is withdrawn, as of June 2, 2009.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0006 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, contact Lieutenant Commander Mark Gibbs at U.S. Coast Guard Sector Jacksonville Prevention Department, telephone 904–564–7563, e-mail *Mark.A.Gibbs@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2008, we published a notice of proposed rulemaking entitled ''Seventh Coast Guard District, Captain of the Port Zone Jacksonville, Temporary Restricted Anchorage'' in the **Federal Register** (73 FR 12925). We received no comments on the proposed rule; no public meeting was requested and none was held.

The rulemaking concerned establishment of three, multi-purpose, temporary restricted anchorages with associated safety/security zones to service vessels intending to call on the ports of Jacksonville or Fernandina, within the Captain of the Port Zone Jacksonville as defined by 33 CFR 3.35–20. These temporary restricted anchorages and associated safety/security zones were designed for the geographic separation and/or restriction of vessels or persons on such vessels when such vessels or persons pose or are suspected of posing a safety, public health, environmental, or security threat.

Withdrawal

The proposed rule sought to establish anchorage areas beyond three nautical miles from the territorial sea baseline. Currently, the Coast Guard's authority under the Rivers and Harbors Act does not allow it to create anchorages more than three miles from the territorial sea baseline (*see* 33 CFR 2.20 and 2.22). Therefore, we are withdrawing our proposal, which was published on March 11, 2008, in the **Federal Register** (73 FR 12925).

Authority: We issue this notice of withdrawal under the authority of 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

Dated: May 12, 2009.

R.S. Branham,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. E9–12707 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 09–65; FCC 09–38]

Assessment and Collection of Regulatory Fees for Fiscal Year 2009

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $341,875,000 that Congress has required the Commission to collect for fiscal year 2009. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due June 4, 2009, and reply comments are due June 11, 2009.

ADDRESSES: You may submit comments, identified by MD Docket No. 09–65, 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/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include MD Docket No. 09–65 in the subject line of the message.
- *Mail:* 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.

FOR FURTHER INFORMATION CONTACT: Daniel Daly, Office of Managing Director at (202) 418–1832.

SUPPLEMENTARY INFORMATION:

Adopted: May 11, 2009; Released: May 14, 2009.

By the Commission: Acting Chairman Copps issuing a statement.

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- Initial Regulatory Flexibility Analysis.
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- Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages.
- FY 2008 Schedule of Regulatory Fees.
- Proposed Rules for FY 2009 International Bearer Circuit Fees.

I. Introduction

1. Section 9 of the Communications Act of 1934, as amended (''the Act''), requires the Commission to assess fees to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] The Commission is obligated to collect $341,875,000 in regulatory fees during Fiscal Year (''FY'') 2009 to fund the Commission's operations.[2] In the accompanying Notice of Proposed Rulemaking (''NPRM''), we request comment on substantive and procedural aspects of our current regulatory fee program, including assessment of fees on digital broadcasting television licensees after the June 12, 2009 nationwide digital transition date.

II. Notice of Proposed Rulemaking

A. FY 2009 Regulatory Fee Assessment Methodology—Development of FY 2009 Regulatory Fees

2. In this NPRM, we seek comment on the development of FY 2009 regulatory fees collected pursuant to section 9 of the Act. For FY 2009, we propose to retain the established methods and policies that the Commission has used to collect regulatory fees in the past except as discussed below. For the FY 2009 regulatory fee cycle, we propose to retain most of the administrative measures used for notification and assessment of regulatory fees of previous years. As we have in previous years, we seek comment on ways to improve the Commission's administrative processes for notifying entities of their regulatory fee obligations and collecting their payments.

3. The Commission is obligated to collect $341,875,000 in regulatory fees during FY 2009 to fund the Commission's operations.[3] Consistent with our established practice, we intend to collect these fees in the August-September 2009 time frame in order to collect the required amount by the end of the fiscal year.

4. For our FY 2009 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2008, except with regard to submarine cable systems or as otherwise discussed below.[4] Each fiscal year, the Commission proportionally allocates to fee categories the total amount that must be collected through our section 9

[1] 47 U.S.C. 159(a)(1).

[2] *See Omnibus Appropriations Act, 2009,* Public Law 111–8.

[3] *See Omnibus Appropriations Act, 2009,* Public Law 111–8.

[4] We recently revised the Commission's international bearer circuit (IBC) fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, Second Report and Order (rel. March 24, 2009) (''*Submarine Cable Order*''). Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. See Appendix A for the proposed regulatory fees for international submarine cable systems based on the new methodology adopted in the *Submarine Cable Order.* See Appendix I for the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in Appendix A to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the *Submarine Cable Order. See Submarine Cable Order* at paragraph 20.

regulatory fees.[5] Consistent with past practice, we propose to divide the FY 2009 payment amount by the number of payment units in each fee category to calculate the unit fee. For cases involving small fees, we propose to divide the resulting unit fee by the term of the license. We propose to round these fees consistent with the requirements of section 9(b)(2) of the Act. We seek comment on these proposals.

B. Regulatory Fee Obligations for Digital Broadcasters

5. The rules currently require that VHF and UHF stations pay regulatory fees; the rules do not specify ''analog'' or ''digital.'' [6] In our *FY 2005 Report and Order,* we stated that we had sought comment on whether to establish regulatory fee obligations for digital broadcasters but received no comments on the issue and did not establish regulatory fee obligations for digital broadcasters at that time.[7] We instead maintained that the regulatory fee obligation applied only for analog broadcaster facilities. Again in the Commission's *FY 2008 Report and Order,* we sought comment on how to assess regulatory fees after the conversion from analog to digital broadcasting, which will be completed on June 12, 2009 for full-power stations.[8] We again received no comments on this issue.

6. Consistent with past years, we will not assess FY 2009 regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Stations that were broadcasting in both analog and digital on October 1, 2008 will be assessed FY 2009 regulatory fees for their analog license only. Also consistent with our past practice, stations that were broadcasting in digital only on October 1, 2008 will not be assessed regulatory fees for their digital license for FY 2009.

7. Beginning in FY 2010, we plan to collect regulatory fees from digital broadcasters. We seek comment on our plan to collect regulatory fees on full-power digital broadcast stations beginning with FY 2010, *i.e.,* the fiscal year after the nation-wide transition date on June 12, 2009. Our goal is to ensure that digital broadcasters will pay their share of regulatory fees in the years after the nation-wide transition is complete. Therefore, in FY 2010, we plan to collect regulatory fees from digital broadcasters. During this transitional year, we seek comment on our plan to collect regulatory fees from digital broadcasters beginning in FY 2010, and whether an accompanying rule change is necessary.

C. Commercial Mobile Radio Service Messaging Service

8. Commercial Mobile Radio Service (''CMRS'') Messaging Services, which replaced the CMRS One-Way Paging fee category in FY 1997, includes all narrowband services.[9] We have maintained the CMRS Messaging Service regulatory fee at the rate that was first established in FY 2002,[10] $0.08 per subscriber, because the subscriber base in this industry has declined significantly.[11] We found that maintaining the CMRS Messaging regulatory fee rate at $0.08 per subscriber, rather than allowing it to increase, was the appropriate level of relief to be afforded to the messaging industry. We propose to maintain the messaging service regulatory fee at $0.08 per subscriber. We seek comment on this proposal.

D. International Bearer Circuits

9. Under our current policy, International Bearer Circuits (''IBC'') fees are paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. Submarine cable operators pay IBC fees for common carrier and non-common carrier circuits based on a per system fee.[12] Initially, in 1994 when the Commission first established regulatory fees, it only required that terrestrial, satellite and submarine cable common carriers providing IBCs and non-common carrier submarine cable operators providing IBCs pay the regulatory fees.[13] Since 1997 operators of non-common carrier satellites also must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services.[14]

10. We propose to collect IBC regulatory fees in FY 2009 consistent with our current policy.[15] In the *FY 2008 Report and Order,* the Commission initiated a Further NPRM to review its regulatory fee methodology and explore ways to ''comprehensively make the Commission's regulatory fee process more equitable.'' [16] We note that our review is continuing. On March 17, 2009, we adopted the *Submarine Cable Order,* which made the methodology for calculating regulatory fees more equitable among international submarine cable operators, without distinguishing between common carriers and non-common carriers.[17] That decision did not, however, substantively address the IBC fees for terrestrial operators.[18] As part of our comprehensive effort to review our regulatory fees process for possible ways to make the process more equitable, we

[5] *See* Appendix H for the proposed FY 2009 regulatory fee assessment methodology, including a comparison to the FY 2008 results.

[6] *See* 47 CFR 1.1153.

[7] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005,* MD Docket No. 05–59, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12266–67, paragraph 23 (2005) (''*FY 2005 Report and Order*'').

[8] *FY 2008 Report and Order* at paragraphs 44–46.

[9] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, paragraph 60 (1997) (''*FY 1997 Report and Order*'').

[10] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, 15992, paragraph 21 (2003) (''*FY 2003 Report and Order*'').

[11] The subscriber base in the paging industry declined 83 percent from 40.8 million to 6.95 million, from FY 1997 to FY 2008, according to FY 2008 collection data as of September 30, 2008.

[12] We recently revised our IBC fee rules to assess fees on both common carrier and non-common carrier international subcable systems based on a per system fee. *Submarine Cable Order* at paragraph 13.

[13] *See Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year,* Report and Order, MD Docket No. 94–19, FCC 94–140, 9 FCC Rcd 5333, 5367, paragraph 98 (1994).

[14] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997 (1997 Regulatory Fees Order),* Report and Order, MD Docket No. 96–186, FCC 97–215, 12 FCC Rcd 17161 (1997) *aff'd Panamsat Corporation* v. *FCC,* 198 F.3d 890, 898 (D.C. Cir 1998). When including non-common carrier satellite operators providing international communications among the payors of regulatory fees for international bearer circuits, the Commission stated that ''although we have not in the past required these providers to pay the international bearer circuit regulatory fees, we conclude that it is now appropriate to impose the fee, due to these satellite providers extensive participation in services once reserved to the common carriers and [non-common carrier] undersea cable operators and, in particular, to the important role they now play in the provision of international bearer circuits.'' 12 FCC Rcd at 17189, at paragraph 71 (1997).

[15] On March 17, 2009, the Commission adopted the *Submarine Cable Order,* which changed the methodology for calculating regulatory fees for international submarine cable operators. After a pending 90-day congressional notification period, this new methodology will be incorporated into the FY 2009 regulatory fee *Report and Order* and will become effective in fiscal year 2009.

[16] *See FY 2008 Report and Order* at paragraph 2. The Further NPRM, however, did not seek comment on any issues specifically related to IBC fees. *See id.* at paragraph 25–58.

[17] *See Submarine Cable Order* at paragraph 2.

[18] *Id.,* at paragraph 20 n.48 (encouraging terrestrial IBC providers, among others, to propose any changes to the regulatory fee methodology that would better serve their interests).

now seek comment on whether, beginning in FY 2010, carriers providing international service over terrestrial circuits also should pay IBC fees on non-common carrier circuits.[19] Carriers primarily provide terrestrial international services through microwave and fiber links across the U.S.-Canada and U.S.-Mexico borders.[20] Non-common carrier terrestrial circuits play an important role in the provision of international services on the U.S.-Canada and U.S.-Mexico routes. Due to their proximity to the United States, these two border countries are among the largest telecommunications routes, and the Commission regularly engages with counterparts in Canada and Mexico on a wide range of issues related to cross-border communications.[21] If carriers were to pay regulatory fees for their non-common carrier terrestrial circuits, we note that this would not increase the total amount of IBC fees that need to be collected each year.

E. Administrative and Operational Issues

11. We seek comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. These issues do not affect the amount of regulatory fees parties are obligated to submit; however, the administrative and operational issues affect the process of submitting payment. We invite comment on ways to improve these processes.

1. Mandatory Use of Fee Filer

12. In the past we have strongly encouraged regulatees to electronically file their regulatory fee payments via Fee Filer, instead of submitting payment with a completed hardcopy Form 159, Form 159–B, or Form 159–W.[22] Although we have strongly urged the use of Fee Filer, we have not required it. This year, we seek comment on whether the Commission should require all regulatees to enter critical information in Fee Filer, even if they do not pay through Fee Filer. By entering the Fee Filer system, even if the regulatee does not pay electronically, certain information will be entered into our system by the regulatee, such as the FRN, a correct address, and key electronic data attributes such as a call sign, payment amount, fee code, and quantity of subscribers. By instituting a mandatory filing requirement (but not a mandatory electronic payment requirement), we believe this will reduce errors resulting from illegible handwriting on hardcopy Form 159's as well as create an electronic record of licensees who have paid regulatory fees. For those licensees who use the Commission's electronic payment system (also known as ''Fee Filer''), but who choose to mail in their payments using the Form 159–E voucher generated by Fee Filer, the Commission will have an electronic record of licensee payment attributes that are more easily traced than those payments that are simply mailed in with a hardcopy Form 159. Those who file and pay through Fee Filer are also certifying to the accuracy of their payment, their subscriber count, and their revenue amount.

13. Although we do not propose at this time to require *payment* through Fee Filer, we strongly encourage regulatees to do so. There are many benefits: (1) Expeditious submission of payment; (2) no postage or courier costs; (3) fewer errors caused by illegible handwriting or payments submitted without an FRN number or the appropriate data attributes (*e.g.,* payers will avoid false delinquencies due to payment submission errors); (4) improved recordkeeping and payment reconciliation; (5) reduced administrative burden on both licensees and on Commission staff trying to process regulatory fee payments; (6) less expensive than a wire transfer; and (7) a significant reduction in the use of payment remittance forms such as Form 159–C's submitted in support of a regulatory fee payment. These benefits will not only reduce the paper burden on licensees, but the administrative burden of preparing and mailing such documents.

14. For regulatees who choose not to *pay* online, such as those licensees whose credit card transactions exceed $99,999.99, Fee Filer also provides an opportunity to make a payment using your bank account, also known as an Automated Clearing House (''ACH'') payment, or generating an electronic remittance voucher form (Form 159–E) that can be printed directly from Fee Filer and mailed in with a check. ACH payments do not have restrictions on the amount remitted.

15. For the reasons given in paragraphs 18 through 20, we tentatively conclude that we should require regulatees to file key information into Fee Filer, even if they do not use Fee Filer to make their payment. In instances where payment cannot be made using Fee Filer, which include credit card transactions exceeding $99,999.99, wire transfers, and licensees wishing to pay using a check, we propose that those licensees still enter the Fee Filer system in order to generate a Form 159–E remittance voucher to accompany their payment. We seek comment on this proposal. Commenters opposing the mandatory Fee Filer requirement should provide the reasons for their argument, and should provide supporting facts and other data, particularly with respect to any claimed burdens of this approach.

2. Notification and Collection of Regulatory Fees

a. Pre-Bills

16. In prior years, the Commission mailed pre-bills to licensees in select regulatory fee categories via surface mail—to interstate telecommunications service providers (''ITSPs''), Geostationary (''GSO'') and Non-Geostationary (''NGSO'') satellite space station licensees,[23] to holders of Cable Television Relay Service (''CARS'') licenses, and earth station licensees.[24] The remaining regulatees do not receive pre-bills. Consistent with the Commission's proposal to require mandatory use of Fee Filer above, pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail. We seek comment on the impact of our proposal not to mail pre-bills to ITSP providers, GSO and NGSO

[19] A carrier may have both common carrier and non-common carrier circuits.

[20] Terrestrial facilities, particularly microwave, may also be used on other short range international routes such as the U.S. Virgin Islands-British Virgin Islands and the American Samoa-Samoa routes.

[21] *See* 2006 International Telecommunications Data, Strategic Analysis and Negotiations Division, Multilateral Negotiations and Industry Analysis Branch, International Bureau (August 2008); International Bureau Report: 2007 Section 43.61 Circuit Status Report, Policy Division (March 2009). These reports, and reports from previous years, are available on the International Bureau Web site at *http://www.fcc.gov/ib/*.

[22] Fee Filer can be accessed at *http://www.fcc.gov/fees/feefiler.html*.

[23] Geostationary orbit space station (''GSO'') licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[24] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

licensees, CARS licensees, and earth station licensees.

b. Future Streamlining of the Regulatory Fee Assessment and Collection Process

17. We continue to welcome comments concerning our commitment to reviewing, streamlining, and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) The process for notifying licensees about changes in the annual Schedule of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.,* through surface mail, e-mail, list server using Listserv, online Web site, or some other mechanism; (3) the fee payment process, including how the agency's online regulatory fee filing system (Fee Filer) can be enhanced; (4) the timing of fee payments, including whether we should alter the existing section 9 regulatory fee payment window in any way; and (5) the timing of fee assessments and notifications.

III. Procedural Matters

18. Below are our current payment and collection procedures that we have revised over the past several years to expedite the processing of regulatory fee payments. We include these procedures here as a useful way to remind regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

19. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html*, but will not send out public notices and fact sheets to regulatees *en masse*.

B. Assessment Notifications

1. Media Services Licensees

20. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[25] The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[26] Consistent with procedures used last year, we will continue our notification assessment initiative in FY 2009 and mail media assessment notifications to licensees at their primary record of contact populated in our Consolidated Database System (''CDBS''), and to a secondary record of contact, if available.[27] We will also continue to make the Commission-authorized Web site available to licensees so that they can update or correct any information regarding their facilities and their fee-exempt status.[28]

21. Although the Commission will continue to mail media assessment notifications, there is a proposal in this Notice of Proposed Rulemaking to institute a mandatory use of the Commission's online payment system (''Fee Filer''), which if adopted, will require all media service licensees to use Fee Filer as the first step to paying their regulatory fee obligations. The notification assessments are primarily intended to provide licensees with media data attributes, and are not intended to be used as a substitute for a remittance voucher when making a payment. Licensees wishing to pay by check or money order must first log onto the Commission's Fee Filer system and generate a Form 159–E directly from Fee Filer before mailing in their payment along with their Form 159–E.

2. CMRS Cellular and Mobile Services Assessments

22. As we have done in prior years, we will continue to mail an assessment letter to CMRS providers using data from the Numbering Resource Utilization Forecast (''NRUF'') report that is based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[29] This letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[30] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

23. We will also continue our procedure of giving entities an opportunity to revise their subscriber counts by sending an initial and a final assessment letter. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, the carrier can correct its subscriber count by returning the initial assessment letter or by contacting the Commission and stating a reason for the change (*e.g.*, a purchase or sale of a subsidiary), the date of the transaction, and any other pertinent information that will help to justify a reason for the change. If we receive no response or correction to our initial assessment letter, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses to the initial assessment letters and determine whether a change in the number of subscribers is warranted. The final assessment letter will inform carriers as to whether we have accepted their revision in the number of subscribers.

24. Because some carriers do not file the NRUF report, they may not receive a letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[31] that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2008), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the

[25] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt.

[26] Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[27] We again propose to issue fee assessments for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (''LPTV'') Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2009.

[28] If there is a change of address for the facility, it is the licensee's responsibility to make the address change in the Media Bureau's CDBS system, as well as in the Commission's Registration System (''CORES''). The Commission-authorized web site for media services licensees is *http://www.fccfees.com*.

[29] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paragraphs 38–44 (2005).

[30] *Id.*

[31] *See, e.g.*, Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2008* at 1 (rel. Aug. 2008).

initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

C. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

25. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (''CUID'') basis.

2. CMRS Cellular and Mobile Providers

26. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual calls signs when making their regulatory fee payment, requiring instead for CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[32] We will continue this practice in FY 2009. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category and as one fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2009, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers (''ITSP'')

27. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was no longer a hindrance that slowed the processing of payments. In FY 2008, we continued to round lines 14 and 16 on FCC Form 159–W to the nearest dollar. We will continue rounding lines 14 and 16 when calculating the FY 2009 ITSP fee obligation.

[32] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, paragraph 48 (2006).

D. Payment of Regulatory Fees

1. Lock Box Bank

28. All lock box payments to the Commission for FY 2009 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. For all regulatory fees, the address is: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000.

2. Receiving Bank for Wire Payments

29. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their completed remittance instrument to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as to not delay crediting their account. Wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretran.html*.

3. De Minimis Regulatory Fees

30. Regulatees whose total FY 2009 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2009 regulatory fees.

4. Standard Fee Calculations and Payment Dates

31. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2008 for AM/FM radio stations, analog VHF/UHF full service television stations (including full service digital-only stations that were licensed as of October 1, 2008), and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[33]
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2008. The number of subscribers, units, or telephone numbers on December 31, 2008 will be used as the basis from which to calculate the fee payment.
- The first eleven regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2009.
- *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2008.[34] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2008. In instances where a CARS license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the license as of the fee due date.
- *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or

[33] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order*, in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) (''*InterCall Order*'').

[34] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling units (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk-rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2008, rather than on a count as of December 31, 2008.

before October 1, 2008. In instances where a license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees will be paid for international bearer circuits under our newly adopted methodology pending a 90-day Congressional notification for this permitted amendment;[35] if for any reason the methodology change is not instituted in FY 2009, the pre-FY 2009 methodology will be used to calculate FY 2009 bearer circuit regulatory fees.

E. Enforcement

32. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window to be considered timely. Section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[36] A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule[37] and the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA'').[38] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[39] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

33. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[40] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

F. Final Regulatory Flexibility Certification

34. A final regulatory flexibility certification for the changes adopted in the Order herein is contained in this document. The Commission will send a copy of the Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Initial Regulatory Flexibility Analysis

35. An initial regulatory flexibility analysis (''IRFA'') is contained in this document. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on this NPRM. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

H. Congressional Review Act Analysis

36. The Commission will send a copy of this Notice of Proposed Rulemaking and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

I. Initial Paperwork Reduction Act Analysis

37. This Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA.[41] Our proposed new form for submarine cable operators is contained in this document. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

J. Ex Parte Rules

38. This is as a ''permit-but-disclose'' proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[42] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[43] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

K. Filing Requirements

39. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[44] interested parties may file comments under MD Docket No. 09–65 on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.[45]

40. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.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

[35] *See Submarine Cable Order*.

[36] 47 U.S.C. 159(c).

[37] *See* 47 CFR 1.1910.

[38] Delinquent debt owed to the Commission triggers application of the ''red light rule'' which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

[39] 47 CFR 1.1940(d).

[40] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[41] 44 U.S.C. 3507(d).

[42] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

[43] *See* 47 CFR 1.1206(b)(2).

[44] *See* 47 CFR 1.415, 1.419.

[45] *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

41. *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 8:00 a.m. to 7:00 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.

42. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

43. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov*.

IV. Ordering Clauses

44. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking and Order is *hereby adopted.*

45. *It is further ordered* that Part 1 of the Commission's Rules *are amended* as set forth herein, and these rules shall become effective 90 days after Congressional notification.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking and Order, including the Final Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (''RFA''),[46] the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules in the present NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[47] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[48]

I. Need for, and Objectives of, the Proposed Rules

48. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $341,875,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

49. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[49]

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

50. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[50] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[51] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[52] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[53]

51. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[54]

52. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[55]

53. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[56] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[57] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[58] Thus, we estimate that

[46] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[47] 5 U.S.C. 603(a).

[48] *Id.*

[49] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[50] 5 U.S.C. 603(b)(3).

[51] 5 U.S.C. 601(6).

[52] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[53] 15 U.S.C. 632.

[54] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at p. 40 (July 2002).

[55] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[56] 5 U.S.C. 601(5).

[57] U.S. Census Bureau, *Statistical Abstract of the United States:* 2006, Section 8, p. 272, Table 415.

[58] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, *Statistical Abstract of the United States:* 2006, Section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township

most governmental jurisdictions are small.

54. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [59] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[60] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

55. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[61] According to Commission data,[62] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

56. *Competitive Local Exchange Carriers (''CLECs''), Competitive Access Providers (''CAPs''), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[63] According to Commission data,[64] 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

57. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[65] According to Commission data,[66] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

58. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[67] According to Commission data,[68] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

59. *Payphone Service Providers (''PSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[69] According to Commission data,[70] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

60. *Interexchange Carriers (''IXCs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[71] According to Commission data,[72] 300 carriers have reported that they are engaged in the provision of interexchange services. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

61. *Operator Service Providers (''OSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[73] According to Commission data,[74] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

62. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA

governments nationwide was 38,967, of which 35,819 were small. *Id.*

[59] 15 U.S.C. 632.

[60] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (''Small Business Act''); 5 U.S.C. 601(3) (''RFA''). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[61] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[62] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *''Trends in Telephone Service''* at Table 5.3, Page 5–5 (Aug. 2008) (*''Trends in Telephone Service''*).

[63] 13 CFR 121.201, NAICS code 517110.

[64] *''Trends in Telephone Service''* at Table 5.3.

[65] 13 CFR 121.201, NAICS code 517310.

[66] *''Trends in Telephone Service''* at Table 5.3.

[67] 13 CFR 121.201, NAICS code 517310.

[68] *''Trends in Telephone Service''* at Table 5.3.

[69] 3 CFR 121.201, NAICS code 517110.

[70] *''Trends in Telephone Service''* at Table 5.3.

[71] 13 CFR 121.201, NAICS code 517110.

[72] *''Trends in Telephone Service''* at Table 5.3.

[73] 13 CFR 121.201, NAICS code 517110.

[74] *''Trends in Telephone Service''* at Table 5.3.

has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[75] According to Commission data,[76] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

63. *800 and 800-Like Service Subscribers.*[77] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[78] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[79] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

64. *International Service Providers.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[80]

65. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [81] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[82] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[83] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

66. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [84] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[85] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[86] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

67. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [87] and ''Cellular and Other Wireless Telecommunications.'' [88] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[89] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[90] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[91] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[92] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

68. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [93] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[94] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for

[75] 13 CFR 121.201, NAICS code 517310.

[76] *''Trends in Telephone Service''* at Table 5.3.

[77] We include all toll-free number subscribers in this category.

[78] 13 CFR 121.201, NAICS code 517310.

[79] *''Trends in Telephone Service''* at Tables 18.4, 18.5, 18.6, and 18.7.

[80] 13 CFR 121.201, NAICS codes 517410 and 517910.

[81] U.S. Census Bureau, 2002 NAICS Definitions, ''517410 Satellite Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[82] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517410.

[83] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[84] U.S. Census Bureau, 2002 NAICS Definitions, ''517910 Other Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[85] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517910.

[86] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[87] 13 CFR 121.201, NAICS code 517211.

[88] 13 CFR 121.201, NAICS code 517212.

[89] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

[90] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[91] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212.

[92] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[93] Office of Management and Budget, North American Industry Classification System, p. 515 (1997). NAICS code 518111, ''On-Line Information Services.''

[94] 13 CFR 121.201, NAICS code 518111.

the entire year.[95] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[96] Thus, under this size standard, the great majority of firms can be considered small entities.

69. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [97] and ''Cellular and Other Wireless Telecommunications.'' [98] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[99] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[100] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[101] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[102] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

70. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [103] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[104] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[105] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

71. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[106] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[107] The SBA has approved this definition.[108] An auction of Metropolitan Economic Area (''MEA'') licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[109] Fifty-seven companies claiming small business status won 440 licenses.[110] An auction of MEA and Economic Area (''EA'') licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[111] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[112]

72. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of ''paging and messaging'' services.[113] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[114] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

73. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[115] The SBA has approved these definitions.[116] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

74. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

75. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and

[95] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

[96] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191.

[97] 13 CFR 121.201, NAICS code 517211.

[98] 13 CFR 121.201, NAICS code 517212.

[99] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

[100] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[101] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212.

[102] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[103] 13 CFR 121.201, NAICS code 517212.

[104] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321.

[105] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[106] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (''*Paging Second Report and Order*''); *see also Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paragraphs 98–107 (1999).

[107] *Paging Second Report and Order,* 12 FCC Rcd at 2811, paragraph 179.

[108] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (''WTB''), FCC (Dec. 2, 1998) (''*Alvarez Letter 1998*'').

[109] *See* ''*929 and 931 MHz Paging Auction Closes,*'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[110] *See id.*

[111] *See* ''*Lower and Upper Paging Band Auction Closes,*'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[112] *See* ''*Lower and Upper Paging Bands Auction Closes,*'' Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[113] ''*Trends in Telephone Service*'' at Table 5.3.

[114] ''*Trends in Telephone Service*'' at Table 5.3.

[115] *Amendment of the Commission's Rules To Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[116] *See Alvarez Letter 1998.*

Other Wireless Telecommunications'' services.[117] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[118] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[119] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[120] We have estimated that 222 of these are small under the SBA small business size standard.

76. *Broadband Personal Communications Service.* The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[121] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[122] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[123] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[124] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[125]

77. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.[126] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.[127] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[128] Of the 14 winning bidders, six were designated entities.[129]

78. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[130] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[131] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[132] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[133] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[134] The SBA has approved these small business size standards.[135] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[136] Three of these claimed status as a small or very small entity and won 311 licenses.

79. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[137] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[138] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[139] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[140] The SBA approved these small size standards.[141] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning

[117] 13 CFR 121.201, NAICS code 517212.

[118] 13 CFR 121.201, NAICS code 517212.

[119] ''*Trends in Telephone Service*'' at Table 5.3.

[120] ''*Trends in Telephone Service*'' at Table 5.3.

[121] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) (''*PCS Report and Order*''); *see also* 47 CFR 24.720(b).

[122] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[123] *See Alvarez Letter 1998.*

[124] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (rel. Jan. 14, 1997).

[125] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[126] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 2339 (2001).

[127] *See* ''Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,'' *Public Notice,* 20 FCC Rcd 3703 (2005).

[128] *See* ''Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,'' *Public Notice,* 22 FCC Rcd 9247 (2007).

[129] *Id.*

[130] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[131] *See* ''Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[132] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (''*Narrowband PCS Second Report and Order*'').

[133] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[134] *Id.*

[135] *See Alvarez Letter 1998.*

[136] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[137] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) (''*Channels 52–59 Report and Order*'').

[138] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, paragraph 172.

[139] *See id.*

[140] *See id,* 17 FCC Rcd at 1088, paragraph 173.

[141] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (''*Alvarez Letter 1999*'').

bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[142] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[143] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[144] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

80. The Commission recently reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[145] An auction of 700 MHz licenses commenced January 24, 2008. For the Lower 700 MHz band, 176 licenses over Economic Areas in the A Block, 734 licenses over Cellular Market Areas in the B Block, and 176 licenses over EAs in the E Block are available for licensing.[146] Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

81. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band are available for licensing: 12 licenses over Regional Economic Area Groupings (''REAGs'') in the C Block, and one nationwide license in the D Block.[147] Winning bidders may be eligible for small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years), or very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

82. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[148] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[149] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[150] SBA approval of these definitions is not required.[151] An auction of 52 Major Economic Area (''MEA'') licenses commenced on September 6, 2000, and closed on September 21, 2000.[152] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[153]

83. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[154] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[155] The SBA has approved these small business size standards for the 900 MHz Service.[156] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[157] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[158]

84. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[159] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[160] Of the 22 winning

[142] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[143] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[144] *See id.*

[145] *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands,* WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) (''*700 MHz Second Report and Order*'').

[146] *See* ''Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,'' *Public Notice,* FCC Rcd 15004 (WTB 2007).

[147] *See id.*

[148] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) (''*746–764 MHz Band Second Report and Order*'').

[149] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[150] *See id.*

[151] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[152] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[153] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[154] 47 CFR 90.814(b)(1).

[155] 47 CFR 90.814(b)(1).

[156] *See Alvarez Letter 1999.*

[157] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,''' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[158] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[159] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[160] *See,* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders

Continued

bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

85. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

86. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[161] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

87. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[162] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[163] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[164] The SBA has approved these small size standards.[165] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[166] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (''EAG'') Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[167] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[168] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[169] The Commission conducted a fourth auction in 2007 with three of the five winning bidders claiming small or very small business status.[170]

88. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[171] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[172]

89. The Commission's 1994 Annual Report on PLMRs [173] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

90. *Fixed Microwave Services.* Fixed microwave services include common carrier,[174] private operational-fixed,[175] and broadcast auxiliary radio services.[176] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the

Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[161] 13 CFR 121.201, NAICS code 517212.

[162] Amendment *of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[163] *Id.* at 11068, para. 291.

[164] *Id.*

[165] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (''*Alvarez to Phythyon Letter 1998*'').

[166] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (1998).

[167] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (1999).

[168] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (1999).

[169] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (2002).

[170] *See* ''Auction of Phase II 220 MHz Service Spectrum Licenses Closes,'' *Public Notice,* 22 FCC Rcd 11573 (WTB 2007).

[171] *See* 13 CFR 121.201, NAICS code 517212.

[172] *See generally* 13 CFR 121.201.

[173] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

[174] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[175] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[176] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[177] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

91. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[178] An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[179] The SBA has approved these small business size standards.[180] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

92. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[181] The auction of the 986 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[182] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[183] The SBA has approved these small business size standards in the context of LMDS auctions.[184] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

93. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (''MSAs'').[185] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[186] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[187] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[188] The SBA has approved of these definitions.[189] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

94. *Location and Monitoring Service (''LMS'').* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[190] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[191] These definitions have been approved by the SBA.[192] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

95. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[193] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[194] In the present context, we will use the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[195] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that

[177] 13 CFR 121.201, NAICS code 517212.

[178] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[179] *Id.*

[180] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *See* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[181] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997) (''*LMDS Second Report and Order''*).

[182] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, paragraph 348.

[183] *See id.*

[184] *See Alvarez to Phythyon Letter 1998.*

[185] *See ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,''* Public Notice, 9 FCC Rcd 6227 (1994).

[186] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[187] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[188] *Id.*

[189] *See Alvarez to Phythyon Letter 1998.*

[190] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, paragraph 20 (1998) (''*Automatic Vehicle Monitoring Systems Second Report and Order*''); *see also* 47 CFR 90.1103.

[191] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[192] *See Alvarez Letter 1998.*

[193] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[194] BETRS is defined in section 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[195] 13 CFR 121.201, NAICS code 517212.

may be affected by the rules and policies proposed herein.

96. *Air-Ground Radiotelephone Service.*[196] The Commission has previously used the SBA's small business definition applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[197] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[198] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[199] These definitions were approved by the SBA.[200] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

97. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[201] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[202] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[203] In December 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[204] Further, the Commission made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[205] Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[206] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

98. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (''UHF'') television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico.[207] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[208] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[209]

99. *Multiple Address Systems (''MAS'').* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[210] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[211] The SBA has approved of these definitions.[212] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[213] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total

[196] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[197] 13 CFR 121.201, NAICS codes 517212.

[198] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paragraphs 28–42 (2005).

[199] *Id.*

[200] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[201] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[202] 13 CFR 121.201, NAICS code 517212.

[203] A licensee may have a license in more than one category.

[204] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[205] *See ''Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,''* Public Notice, 19 FCC Rcd 9518 (WTB 2004); *''Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,''* Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[206] 47 CFR 80.1252.

[207] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[208] 13 CFR 121.201, NAICS code 517212.

[209] *Id.*

[210] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, paragraph 123 (2000).

[211] *Id.*

[212] *See Alvarez Letter 1999.*

[213] *See ''Multiple Address Systems Spectrum Auction Closes,''* Public Notice, 16 FCC Rcd 21011 (2001).

of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

100. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of ''Cellular and Other Wireless Telecommunications''. This definition provides that a small entity is any such entity employing no more than 1,500 persons.[214] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

101. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses, beginning on February 7, 2007,[215] and closing on March 8, 2007.[216] In that auction, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[217] Neither of the two winning bidders sought designated entity status.[218]

102. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[219] For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[220] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[221] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[222] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[223] Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[224] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

103. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[225] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[226] The SBA has approved these definitions.[227] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

104. *Broadband Radio Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')).[228] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[229] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[230] After

[214] *See* 13 CFR 121.201, NAICS code 517212.

[215] *See* ''*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*'' Public Notice, 21 FCC Rcd 12393 (WTB 2006).

[216] *See* ''*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*'' Public Notice, 22 FCC Rcd 4714 (2007) (''*Auction No. 69 Closing PN*'').

[217] *Auction No. 69 Closing PN,* Attachment C.

[218] *See Auction No. 69 Closing PN.*

[219] 13 CFR 121.201, NAICS code 517212.

[220] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211.

[221] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[222] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212.

[223] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[224] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[225] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, paragraph 77 (2000) (''*24 GHz Report and Order*''); *see also* 47 CFR 101.538(a)(2).

[226] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[227] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[228] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, paragraph 7 (1995) (''*MDS Auction R&O*'').

[229] 47 CFR 21.961(b)(1).

[230] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

105. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in annual receipts.[231] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[232] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[233] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[234] Thus, we estimate that at least 1,932 licensees are small businesses.

106. *Television Broadcasting.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [235] The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts.[236] According to Commission staff review of the BIA Financial Network, Inc., Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations [237] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

107. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

108. There are also 2,117 low power television stations (''LPTV'').[238] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

109. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[239] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[240] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [241] are included.[242] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

110. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[243]

111. The Commission estimates that there are approximately 5,618 FM translators and boosters.[244] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[245]

112. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to

[231] 13 CFR 121.201, NAICS code 517510.

[232] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[233] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[234] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[235] U.S. Census Bureau, 2002 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/epcd/naics02/def/NDEF515.HTM.*

[236] 13 CFR 121.201, NAICS code 515120.

[237] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[238] *FCC News Release,* ''Broadcast Station Totals as of September 30, 2007.''

[239] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

[240] *Id.*

[241] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[242] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[243] 13 CFR 121.201, NAICS codes 513111 and 513112.

[244] *See supra* note 242.

[245] 15 U.S.C. 632.

consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' [246] The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[247] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[248] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[249] Thus, under this size standard, the majority of firms can be considered small.

113. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[250] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[251] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[252] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.[253] Thus, under this second size standard, most cable systems are small.

114. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [254] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[255] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[256] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[257] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

115. *Open Video Services.* Open Video Service (''OVS'') systems provide subscription services.[258] The SBA has created a small business size standard for Cable and Other Program Distribution.[259] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[260] Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

116. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[261] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[262] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[263] Thus, under this size standard, the majority of firms can be considered small.

117. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[264] These definitions were approved by the SBA.[265] On January 27,

[246] U.S. Census Bureau, 2002 NAICS Definitions, ''517510 Cable and Other Program Distribution''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[247] 13 CFR 121.201, NAICS code 517510.

[248] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[249] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[250] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[251] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2; Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[252] 47 CFR 76.901(c).

[253] Warren Communications News, *Television & Cable Factbook 2006,* ''U.S. Cable Systems by Subscriber Size,'' page F–2. The data do not include 718 systems for which classifying data were not available.

[254] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[255] 47 CFR 76.901(f); *see* ''*FCC Announces New Subscriber Count for the Definition of Small Cable Operator,*'' Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau, 2001).

[256] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[257] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[258] *See* 47 U.S.C. 573.

[259] 13 CFR 121.201, NAICS code 517510.

[260] *See http://www.fcc.gov/csb/ovs/csovscer.html.*

[261] 13 CFR 121.201, NAICS code 517510.

[262] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510.

[263] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[264] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, paragraph 252 (2002).

[265] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[266] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[267]

118. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

119. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[268] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[269] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

120. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[270] These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[271] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[272] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

121. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[273] There are a total of approximately 127,540 licensees in these services. Governmental entities [274] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[275]

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

122. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[276] Interstate telephone

[266] *See ''Multichannel Video Distribution and Data Service Auction Closes,''* Public Notice, 19 FCC Rcd 1834 (2004).

[267] *See ''Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,''* Public Notice, 20 FCC Rcd 19807 (2005).

[268] 13 CFR 121.201, NAICS code 517212.

[269] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[270] 47 CFR Part 90.

[271] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[272] 13 CFR 121.201, NAICS Code 517212.

[273] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve State, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are State, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from State departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 State and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[274] 47 CFR 1.1162.

[275] 5 U.S.C. 601(5).

[276] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-

service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

123. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

124. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[277] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[278] Further, in accordance with the DCIA, Federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[279] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another Federal agency until such obligations are paid.[280]

125. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[281] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

126. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[282] In the *NPRM,* we have sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

127. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Proposed Letter to Submarine Cable Operators

[insert address of submarine cable operator]

Re: Regulatory Fees for Fiscal Year [insert year]

Our annual regulatory fee assessment for submarine cable operators is based on the total capacity for the submarine cable system. For this reason, we require submarine cable operators to advise us of the appropriate category for determining regulatory fees. Please indicate below the correct category and return this letter to us by February 15, 20_.

Submarine Cable Systems (capacity as of December 31)	Please check the appropriate category
< 2.5 Gbps	.....
2.5 Gbps or greater, but less than 5 Gbps	.....
5 Gbps or greater, but less than 10 Gbps	.....
10 Gbps or greater, but less than 20 Gbps	.....
20 Gbps or greater	.....

Thank you for your assistance in this matter.

CERTIFICATION STATEMENT

I _____ certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE _____

DATE _____

Sources of Payment Unit Estimates for FY 2009

In order to calculate individual service fees for FY 2009, we adjusted FY 2008 payment units for each service to more accurately reflect expected FY 2009 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee databases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS'') and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline

commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[277] 47 CFR 1.1164.

[278] 47 CFR 1.1164(c).

[279] Public Law 104–134, 110 Stat. 1321 (1996).

[280] 31 U.S.C. 7701(c)(2)(B).

[281] 47 CFR 1.1166.

[282] 5 U.S.C. 603.

Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2009 estimates with actual FY 2008 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2009 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2009 payment units are based on FY 2008 actual payment units, it does not necessarily mean that our FY 2009 projection is exactly the same number as FY 2008. We have either rounded the FY 2009 number or adjusted it slightly to account for these variables.

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FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 08 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 08 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2008 payment units.
Broadcast Auxiliaries	Based on actual FY 2008 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2008 payment units.
LMDS	Based on WTB reports and actual FY 2008 payment units.
Cable Television Relay Service ("CARS") Stations	Based on data from Media Bureau's COALS database and actual FY 2008 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2008 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-Q data for the four quarters of calendar year 2008, the Wireline Competition Bureau projected the amount of calendar year 2008 revenue that will be reported on 2008 FCC Form 499-A worksheets in April, 2009.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2008 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2008 payment units.
International Bearer Circuits	Based on IB reports and actual FY 2008 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on IB reports and actual FY 2008 payment units.

Calculation of FY 2009 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
PLMRS (Exclusive Use)	1,200	10	460,000	501,932	42	40	480,000
PLMRS (Shared use)	11,500	10	2,300,000	2,509,659	22	20	2,300,000
Microwave	7,500	10	1,960,000	2,138,666	29	30	2,250,000
218-219 MHz (Formerly IVDS)	3	10	1,800	1,964	65	65	1,950
Marine (Ship)	7,500	10	840,000	916,571	12	10	750,000
GMRS	11,000	5	350,000	381,905	7	5	275,000
Aviation (Aircraft)	7,000	10	375,000	409,183	6	5	350,000
Marine (Coast)	275	10	108,500	118,390	43	45	123,750
Aviation (Ground)	1,500	10	170,000	185,497	12	10	150,000
Amateur Vanity Call Signs	15,000	10	184,500	201,318	1.34	1.34	201,000
AM Class A	65	1	227,500	248,238	3,819	3,825	248,625
AM Class B	1,567	1	2,737,000	2,986,494	1,906	1,900	2,977,300
AM Class C	938	1	958,375	1,045,737	1,115	1,125	1,055,250
AM Class D	1,715	1	3,241,400	3,536,873	2,062	2,050	3,515,750
FM Classes A, B1 & C3	3,045	1	6,764,000	7,376,081	2,422	2,425	7,384,125
FM Classes B, C, C0, C1 & C2	3,051	1	8,292,175	9,043,557	2,964	2,975	9,076,725
AM Construction Permits	90	1	39,425	43,019	478	480	43,200
FM Construction Permits[1]	315	1	179,400	204,750	650	650	204,750
Satellite TV	127	1	149,225	162,828	1,282	1,275	161,925
Satellite TV	3	1	1,785	1,948	649	650	1,950

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
Construction Permit							
VHF Markets 1-10	42	1	2,984,100	3,257,932	77,570	77,575	3,258,150
VHF Markets 11-25	55	1	3,050,925	3,330,848	60,561	60,550	3,330,250
VHF Markets 26-50	75	1	2,581,425	2,818,550	37,581	37,575	2,818,125
VHF Markets 51-100	118	1	2,480,950	2,708,256	22,951	22,950	2,708,100
VHF Remaining Markets	200	1	1,092,000	1,191,542	5,958	5,950	1,190,000
VHF Construction Permits[1]	3	1	22,400	17,850	5,950	5,950	17,850
UHF Markets 1-10	87	1	1,931,475	2,109,219	24,244	24,250	2,109,750
UHF Markets 11-25	81	1	1,596,950	1,744,200	21,533	21,525	1,743,525
UHF Markets 26-50	110	1	1,344,700	1,468,956	13,354	13,350	1,468,500
UHF Markets 51-100	164	1	1,142,400	1,247,604	7,607	7,600	1,246,400
UHF Remaining Markets	195	1	347,400	379,068	1,944	1,950	380,250
UHF Construction Permits[1]	15	1	32,400	29,250	1,950	1,950	29,250
Broadcast Auxiliaries	27,500	1	276,000	301,159	11	10	275,000
LPTV/Trans-lators/Boosters/ Class A TV	3,450	1	1,277,500	1,393,952	404	400	1,380,000
CARS Stations	650	1	153,750	167,765	258	260	169,000
Cable TV Systems	64,500,000	1	51,840,000	56,565,522	0.8769	0.88	56,760,000
Interstate Tele-communication Service Providers	$46,800,000,000	1	146,638,00	160,004,920	0.0034189	0.00342	160,056,000
CMRS Mobile	270,000,000	1	44,200,000	48,280,138	0.1788	0.180	48,600,000

Fee Category	FY 2009 Payment Units	Years	FY 2008 Revenue Estimate	Pro-Rated FY 2009 Revenue Require-ment	Computed New FY 2009 Regulatory Fee	Rounded New FY 2009 Regula-tory Fee	Expected FY 2009 Revenue
Services (Cellular/Public Mobile)							
CMRS Messag. Services	7,000,000	1	560,000	560,000	0.080	0.080	560,000
BRS[2]	1,725	1	501,500	552,000	320	320	552,000
LMDS	335	1	98,825	107,200	320	320	107,200
International Bearer Circuits	10,500,000	1	8,137,500	8,879,281	.846	.85	8,925,000
International Public Fixed	1	1	2,025	2,210	2,210	2,200	2,200
Earth Stations	4,050	1	780,000	851,102	210	210	850,500
International HF Broadcast	5	1	4,300	4,692	938	950	4,750
Space Stations (Geostationary)	87	1	10,140,500	11,064,866	127,182	127,175	11,064,225
Space Stations (Non-Geostationary	6	1	754,500	823,277	137,213	137,225	823,350
****** Total Estimated Revenue to be Collected			313,311,610	341,875,966			341,980,675
****** Total Revenue Requirement			312,000,000	341,875,000			341,875,000
Difference			1,311,610	966			105,675

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, paragraph 6 (2004).

Proposed FY 2009 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	30
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.34
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	320
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	320
AM Radio Construction Permits	480
FM Radio Construction Permits	650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	77,575
Markets 11-25	60,550
Markets 26-50	37,575

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 51-100	22,950
Remaining Markets	5,950
Construction Permits	5,950
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	24,250
Markets 11-25	21,525
Markets 26-50	13,350
Markets 51-100	7,600
Remaining Markets	1,950
Construction Permits	1,950
Satellite Television Stations (All Markets)	1,275
Construction Permits – Satellite Television Stations	650
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	400
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	260
Cable Television Systems (per subscriber) (47 CFR part 76)	.88
Interstate Telecommunication Service Providers (per revenue dollar)	.00342
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,175
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	137,225
International Bearer Circuits (per active 64KB circuit) [1]	.85
International Public Fixed (per call sign) (47 CFR part 23)	2,200
International (HF) Broadcast (47 CFR part 73)	950

[1] As discussed previously herein, we recently revised the Commission's IBC fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. See Submarine Cable Order. Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. The proposed regulatory

fees for international submarine cable systems based on the new methodology adopted in the Submarine Cable Order are contained in this document. Also contained are the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in this document to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the Submarine Cable Order. See Submarine Cable Order at paragraph 20.

FY 2009 SCHEDULE OF REGULATORY FEES (continued)

FY 2009 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$675	$550	$500	$575	$650	$825
25,001 – 75,000	$1,350	$1,075	$750	$875	$1,325	$1,450
75,001 – 150,000	$2,025	$1,350	$1,000	$1,450	$1,825	$2,725
150,001 – 500,000	$3,050	$2,300	$1,500	$1,725	$2,800	$3,550
500,001 – 1,200,000	$4,400	$3,500	$2,500	$2,875	$4,450	$5,225
1,200,001 – 3,000,00	$6,750	$5,400	$3,750	$4,600	$7,250	$8,350
>3,000,000	$8,100	$6,475	$4,750	$5,750	$9,250	$10,850

Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with

[1] 47 CFR 73.150 and 73.152.

[2] See Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

the Field Strength (50–50) propagation curves specified in 47 CFR section 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FY 2008 Schedule of Regulatory Fees

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	40
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	60
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	35
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.23
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license sign) (47 CFR part 21)	295
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	295
AM Radio Construction Permits	415
FM Radio Construction Permits	600
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	71,050
Markets 11-25	53,525
Markets 26-50	33,525
Markets 51-100	21,025
Remaining Markets	5,600
Construction Permits	5,600
TV (47 CFR part 73) UHF Commercial	

[3] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 1-10	21,225
Markets 11-25	19,475
Markets 26-50	11,900
Markets 51-100	6,800
Remaining Markets	1,800
Construction Permits	1,800
Satellite Television Stations (All Markets)	1,175
Construction Permits – Satellite Television Stations	595
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	205
Cable Television Systems (per subscriber) (47 CFR part 76)	.80
Interstate Telecommunication Service Providers (per revenue dollar)	.00314
Earth Stations (47 CFR part 25)	195
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	119,300
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	125,750
International Bearer Circuits (per active 64KB circuit)	.93
International Public Fixed (per call sign) (47 CFR part 23)	2,025
International (HF) Broadcast (47 CFR part 73)	860

FY 2008 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$650	$500	$450	$525	$600	$775
25,001 – 75,000	$1,325	$1,025	$650	$775	$1,225	$1,375
75,001 – 150,000	$1,975	$1,275	$875	$1,300	$1,675	$2,550
150,001 – 500,000	$2,975	$2,175	$1,325	$1,550	$2,600	$3,325
500,001 – 1,200,000	$4,300	$3,325	$2,200	$2,575	$4,125	$4,900
1,200,001 – 3,000,00	$6,600	$5,100	$3,300	$4,125	$6,700	$7,850
>3,000,000	$7,925	$6,125	$4,175	$5,150	$8,550	$10,200

BILLING CODE 6712–01–C

Statement of Acting Chairman Michael J. Copps

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09–65, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08–65.

This item begins the process of assessing regulatory fees for this fiscal year (FY 2009) pursuant to Section 9 of the Communications Act. Section 9 requires that the Commission collect fees each year to recover the regulatory costs that are associated with its enforcement, policy and rulemaking, user information, and international activities.

I am particularly pleased that the Notice of Proposed Rulemaking includes the new methodology for calculating regulatory fees for submarine cable operators finally adopted by the Commission in March. Implementing this new methodology, however, is only a precursor of our completion of a long overdue, comprehensive review of the Commission's regulatory fee framework, a project that my colleague Jonathan Adelstein and I have been pushing for years and that was finally launched by the Commission last August. As I have said before, it is hard to believe that we are still generally assessing fees based on the communications marketplace as it existed in 1994. To be frank, we are not yet able to say what a modernized fee structure will look like. But I do intend to press the Commission for action on this before we issue next year's Notice of Proposed Rulemaking for FY 2010. I look forward to working with my fellow Commissioners and interested stakeholders to update our rules to accurately and equitably reflect today's regulatory practices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules for FY 2009 International Bearer Circuit Fees [283]

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Claims, Communications common carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

2. The FCC proposes to further amend the final rule published at 74 FR 22110, May 12, 2009, and effective July 13, 2009, in § 1.1156, by revising paragraphs (b) and (c) to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services

* * * * *

(b) *International Terrestrial and Satellite*. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates.

In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

Note to paragraph (b): The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

International Terrestrial and Satellite (capacity as of December 31, 2008)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	$0.75 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(c) *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Submarine Cable Systems (capacity as of December 31)	Fee amount	Address
< 2.5 Gbps	$14,189	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	28,379	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	56,757	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[283] As discussed previously herein, we recently revised the Commission's IBC fee rules by adopting a new methodology for calculating regulatory fees on both common carrier and non-common carrier international submarine cable systems based on a per system fee. *See Submarine Cable Order*. Under section 9(b)(4)(B) of the Act, we must notify Congress 90 days before a permitted amendment to the regulatory fees can take effect. The 90 day period will elapse as of July 15, 2009. For this reason, we are calculating proposed regulatory fees for FY 2009 for this service using both the new methodology and the old (pre-FY 2009) methodology. Appendix A contains the proposed regulatory fees for international based on the new methodology adopted in the *Submarine Cable Order*. See Appendix I for the proposed regulatory fees for international submarine cable systems based on the current methodology which remains in effect pending the Congressional notification process. If the 90 day period elapses without Congressional objection to the permitted amendment, we will use the new methodology contained in Appendix A to calculate submarine cable fees in our FY 2009 report and order. Terrestrial and satellite facilities do not have cable landing licenses and will continue to pay regulatory fees on a per 64KB circuit basis, under our historic methodology as revised in the *Submarine Cable Order*. *See Submarine Cable Order* at paragraph 20.

Submarine Cable Systems (capacity as of December 31)	Fee amount	Address
10 Gbps or greater, but less than 20 Gbps	113,514	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	227,029	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[FR Doc. E9–12594 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 74, No. 104
Tuesday, June 2, 2009

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

DEPARTMENT OF AGRICULTURE

Center for Nutrition Policy and Promotion; Agency Information Collection Activities; Proposed Collection; Comment Request—Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This is a revision of a currently approved collection.

This notice announces the Center for Nutrition Policy and Promotion's (CNPP) intention to request the Office of Management and Budget's approval of the information collection processes and instruments to be used during consumer research while testing nutrition education messages and products developed for the general public. The purpose for performing consumer research is to identify consumers' understanding of potential nutrition education messages and obtain their reaction to prototypes of nutrition education products, including Internet-based tools. The information collected will be used to refine messages and improve the usefulness of products as well as aid consumer understanding of current *Dietary Guidelines for Americans* and MyPyramid-related materials (OMB No.: 0584–0535, Expiration Date 6/30/2009).

DATES: Written comments on this notice must be submitted on or before August 3, 2009.

ADDRESSES: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Carole Davis, Director, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Carole Davis at 703–305–3300 or via e-mail to *DG2010Comments@cnpp.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at the Center for Nutrition Policy and Promotion's main office located at 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Carole Davis at 703–305–7600.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public.

OMB Number: 0582–0523.

Expiration Date: January 31, 2010.

Type of Request: Revision of a currently approved information collection.

Abstract: The *Dietary Guidelines for Americans,* issued jointly by the U.S. Departments of Agriculture and Health and Human Services, are the cornerstone of Federal nutrition policy and form the basis for nutrition education efforts of these agencies. The U.S. Department of Agriculture's CNPP develops and promotes nutrition education materials to help consumers understand and use the *Dietary Guidelines for Americans* as well as MyPyramid, the tool designed to help consumers implement the *Dietary Guidelines.* Additional materials (hard copy and electronic) are used to help consumers understand and use the *Dietary Guidelines,* many of which may be geared toward various special population groups. Publications and web materials that have become obsolete since the release of the 2010 *Dietary Guidelines for Americans* and MyPyramid will also need to be updated and replaced. With the increased prevalence of overweight and obesity in the United States, it has become increasingly important to communicate clear and useful nutrition education information related to the *Dietary Guidelines* on food choices, weight, and physical activity. The USDA has had the lead administrative responsibility for the 2010 *Dietary Guidelines* revision process from which new messages and materials will be developed, including a new consumer bulletin.

Educational messages and products in support of the *Dietary Guidelines for Americans* and MyPyramid will be developed by the Center for Nutrition Policy and Promotion. They may include:

1. Messages and products related to the 2010 *Dietary Guidelines for Americans* that help consumers make healthier food and physical activity choices;
2. Enhancement of the MyPyramid Web site to include additional components such as updated nutrition and physical activity personalized tracking and other interactive tools as well as consumer and professional support materials;
3. Materials relaying the 2010 *Dietary Guidelines for Americans* and MyPyramid for special population groups that might be identified; and
4. New policy, messages, materials, and tools that might be developed as a result of the 2010 *Dietary Guidelines for Americans* revision process.

The products for these initiatives will be tested using qualitative consumer research techniques, which may include focus groups (with general consumers, educators, students, etc.), interviews

(i.e., intercept, individual, diads, triads, usability testing, etc.) and Web-based surveys. Participants being tested will provide information regarding the clarity, understandability, and acceptability of the messages and products during the developmental process and during the final product development stage.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 57,000.

Estimated Number of Responses per Respondent: One.

Estimated Time per Response: 12.63 minutes.

Estimated Total Annual Burden on Respondents: 12,004 hours.

ESTIMATION OF BURDEN HOURS

(a) Affected public	(b) Survey instruments	(c) Number of respondents	(d) Frequency of responses	(e) Est. total annual responses per respondent (dxe)	(f) Hours per response	(g) Total burden (fxg)
Reporting Burden						
	Focus Group Screeners	7,500.00	1.00	7,500.00	0.25	1,875.00
	Interview Screeners	7,500.00	1.00	7,500.00	0.25	1,875.00
	Focus Group Screeners	500.00	1.00	500.00	2.00	1,000.00
	Interview	500.00	1.00	500.00	1.00	500.00
	Web-based Collections	20,000.00	1.00	20,000.00	0.25	5,000.00
Individuals & Households ...	Confidentiality Agreement ..	21,000.00	1.00	21,000.00	0.08	1,753.50
Total	.....	57,000.00	1.00	57,000.00	32.00	12,003.50

Dated: May 26, 2009.

Robert C. Post,

Acting Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

[FR Doc. E9–12748 Filed 6–1–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Members of the National Agricultural Research, Extension, Education and Economics Advisory Board

AGENCY: Research, Education and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 10 vacancies on the National Agricultural Research, Extension, Education and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is July 17, 2009.

ADDRESSES: The nominee's name, resume, completed Form AD–755, and any letters of support must be sent to the U.S. Department of Agriculture, National Research, Extension, Education, and Economics Advisory Board Office, 1400 Independence Avenue, SW., Room 321–A, Whitten Building; Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Karen Hunter, Executive Director, National Agricultural Research, Extension, Education and Economics Advisory Board, 1400 Independence Avenue, SW., Room 321–A, Whitten Building, Washington, DC 20250–0321, *telephone:* 202–720–8408; fax: 202–720–6199; *e-mail: Karen.hunter@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) was amended by the Food, Energy and Conservation Act of 2008 by deleting six members of the National Agricultural Research, Extension, Education and Economics Advisory Board, to total 25 members. Since the inception of the Advisory Board by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for one, two, and three-year terms, respectively to allow for approximately one-third of the Board to change each year. The terms for 10 members who represent specific categories will expire September 30, 2009. Nominations for these 10 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category. Appointments will be made for two-or three-year terms to maintain the approximate one-third change in membership each year dictated by the original legislation.

The 10 slots to be filled are:

Category A. National Farm Organization.
Category C. Food Animal Commodity Producer.
Category I. National Human Health Association.
Category N. NLGCA Institutions.
Category O. Hispanic-Serving Institutions.
Category Q. Transportation of Food and Agricultural Products to Domestic and Foreign Markets.
Category R. Food Retailing and Marketing Interests.
Category S. Food and Fiber Processors.
Category X. Private Sector Organization Involved in International Development.
Category Y. National Social Science Association.

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above *or* for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out, sign, and return a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person below or may be printed out from the following Web

site: *http://www.ree.usda.gov/nareeeab/downloads/forms/AD–755.pdf*). All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Appointments to the National Agricultural Research, Extension, Education and Economics Advisory Board will be made by the Secretary of Agriculture.

Done at Washington, DC this 18th day of May 2009.

Katherine Smith,

Acting Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. E9–12819 Filed 6–1–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability (NOFA) To Announce Funding for the 2008 Aquaculture Grant Program, Recovery Act

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of proposal.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (the Recovery Act) authorizes up to $50 million to carry out a 2008 Aquaculture Grant Program (the 2008 AGP). The 2008 AGP is a Commodity Credit Corporation (CCC) funded program administered by the Farm Service Agency (FSA). Through the 2008 AGP, FSA will provide grants to State governments to assist eligible aquaculture producers that suffered losses associated with high feed input costs during the 2008 calendar year. State grant amounts will be based on the amount of aquaculture feed used in each State during the 2007 calendar year. Also, for the information to be collected for the 2008 AGP, FSA is requesting comments from all interested individuals and organizations as required by the Paperwork Reduction Act of 1995.

DATES: We will consider comments on the information collection that we receive by August 3, 2009.

ADDRESSES: We invite you to submit comments on the information collection that is described in the Paperwork Reduction Act section. In your comment, include the date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* Farm Service Agency, USDA, *Attn:* Dan McGlynn, Acting Director, Production, Emergencies and Compliance Division, STOP 0517, 1400 Independence Ave., SW., Washington, DC 20250.
- *E-mail:* Send comment to: *dan.mcglynn@wdc.usda.gov.*
- *Fax:* (202) 690–2130.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Acting Director, (202) 720–3463; *e-mail: dan.mcglynn@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Notice

This notice announces a proposal for the availability of Recovery Act (Pub. L. 111–5) grant funding to State governments that agree to implement the 2008 AGP to assist eligible aquaculture producers for their losses associated with high feed input costs during the 2008 calendar year.

Background

This notice is issued under Section 102(d) of the Recovery Act that authorizes up to $50 million to carry out the 2008 AGP. To provide assistance to eligible aquaculture producers, FSA is proposing to provide block grants to State governments that agree to provide assistance to eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year.

Grant Funding Allocation

The Recovery Act requires that USDA allocate 2008 AGP funding to the States on a pro rata basis, based on the amount of aquaculture feed used in each State during the 2007 calendar year. FSA has by letter notified the States that it proposes to calculate the amount to allocate to each State based on the total aquaculture feed delivered in each State in the 2007 calendar year, as reported by the States to FSA for the 2008 AGP.

FSA has sent each State Department of Agriculture a letter that includes the instructions and specifies the information to provide to FSA before receiving any grant funding. The States that do not meet the requirements in this notice, the letter, and the grant agreement will not receive grant funding.

Grant Agreements Under the Proposal

Under the current proposal, grant funding to a State is contingent on the execution of a Grant Agreement (Agreement) between CCC and the State. Upon execution of an Agreement, the State would agree to:

(1) Implement the 2008 AGP according to program-specific policy and procedure provided in the Agreement;

(2) Submit a 2008 Aquaculture Grant Work Plan to FSA providing a summary of how the State will implement 2008 AGP to provide assistance to eligible aquaculture producers;

(3) Provide assistance to eligible aquaculture producers, not later than 60 days after the date on which the State receives grant funds;

(4) Facilitate the accountability and transparency objectives of the Recovery Act as provided in 2 CFR part 176, subparts A and D, specifically, the award terms would require;

(a) Recipients and sub-recipients (first-tier that are not individuals) to maintain current registrations in the Central Contractor Registration (CCR) database,

(b) Recipients to report quarterly on project or activity status, sub-grant and subcontract information, and

(c) Proper accounting and reporting of Recovery Act expenditures in single audits; and

(5) Submit to FSA a 2008 AGP Recovery Act Report, no later than 30 days after the States have provided assistance to eligible producers, including the:

(a) Manner in which the State provided assistance,

(b) Amount of assistance provided per producer per species of aquaculture, and

(c) Process by which the State determined the levels of assistance to eligible aquaculture producers.

Definitions Used in the Proposal

Under the current proposal, the following definitions would be applicable to the 2008 AGP:

Controlled environment. An environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water or nutrients) by the producer, is in fact controlled by the producer, as determined by industry standards.

Farming operation. A business enterprise engaged in the production of

agricultural products that is operated by an individual, entity, or joint operation.

Eligible Aquaculture Producers Under the Proposal

To be eligible for 2008 AGP assistance, an aquaculture producer would be required to meet all of the following criteria:

(1) During the 2008 calendar year:

(a) Raised an aquaculture species in a controlled environment,

(b) Maintained the aquaculture species as part of a farming operation, and

(c) Had a risk in the production of the aquaculture species;

(2) Is in operation in 2009, as of the date of their AGP application with the State;

(3) Produced an aquaculture species for which 2008 feed costs represented at least 25 percent of their total input costs for the aquaculture operation;

(4) Experienced at least a 25 percent price increase of 2008 feed costs above the previous 5-year average (2003–2007).

Proposed Application Procedure for Aquaculture Producers

The 2008 AGP application procedures for aquaculture producers would be determined by the applicable State.

Proposed Limitation on Payments and Other Benefits

The amount of assistance provided by the State to a farming operation would not be permitted to exceed the smaller of:

(1) The amount of loss suffered by the eligible aquaculture producer as a result of high feed input costs during the 2008 calendar year, as determined by the State; or

(2) $100,000, except for general partnerships and joint ventures in which case assistance could not exceed $100,000 times the number of members that constitute the general partnership or joint venture.

As a condition to receive the 2008 AGP benefits, an eligible aquaculture producer would be required to have records on file at an applicable Farm Service Agency County office that indicate:

(1) That the producer's average adjusted gross income does not exceed $2.5 million for the three preceding tax years (2005–2007), as determined under regulations in 7 CFR part 1400, and

(2) That the producer is in compliance with the conservation compliance eligibility provisions specified in 7 CFR part 12.

An eligible aquaculture producer that receives assistance under the 2008 AGP will not be eligible to receive assistance for any 2008 loss relating to the same aquaculture species under the supplemental agricultural disaster assistance program established under Section 531 of the Federal Crop Insurance Act and section 901 of the Trade Act of 1974 (these programs include the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP), Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Supplemental Revenue Assistance Program (SURE), and Tree Assistance Program (TAP)).

Appeals

The appeal regulations at 7 CFR parts 11 and 780 apply to the 2008 AGP.

Comments

FSA requested comments on the proposal from the States by letter as they constitute the entire class of fund recipients under the program, although they will be distributing the funds to others as they determine appropriate in accordance with the guidelines established by FSA. Because the Recovery Act directed the Secretary to deliver the funds by June 17, 2009 (not later than 120 days after enactment of the Recovery Act), FSA is not requesting comments from the general public on the proposal set out in this notice other than on the information collection requirements specified below. FSA expects to make a final determination for the grants to the States by June 17, 2009. FSA plans to announce details of the final plan by press release.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA is requesting comments from all interested individuals and organizations on a new information collection for the 2008 AGP. FSA submitted the following information collection request to the Office of Management and Budget (OMB) under the emergency procedure in accordance with the Paperwork Reduction Act of 1995; the emergency approval expires on October 31, 2009. FSA plans to request a 3-year extension of the information collection approval from OMB. The 2008 AGP will provide assistance to eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year in accordance with the Recovery Act.

Title: 2008 Aquaculture Grant Program.

OMB Control Number: 0560–0262.

Type of Request: New.

Abstract: This information collection is needed to comply with Section 102(d) of the Recovery Act that authorizes $50 million for the 2008 AGP. FSA will, under the proposal, provide block grants to State Governments that agree to provide assistance to eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year. The collected information is needed to determine State grant amounts, to ensure equitable treatment of aquaculture producers, and to comply with the transparency, accountability, and reporting requirements of the American Recovery and Reinvestment Act of 2009.

The Recovery Act requires that the grant funding be allocated to the States, on a pro rata basis, based on the amount of aquaculture feed used in each State during the 2007 calendar year. Therefore, the collection of 2007 feed delivery data from the participating States is necessary. In addition, grant funding to a State under the proposal is contingent upon execution of a Grant Agreement that requires the States to submit a 2008 AGP Work Plan and several standard grant forms. Also, the Recovery Act requires the States to complete and submit a 2008 AGP Recovery Act Report.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 3.25 hours per response.

Respondents: States, Local or Tribal Governments.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 97.5.

We are requesting comments on all aspects of the information collection, including the following, to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for extension of OMB approval. All

comments will also become a matter of public record.

Signed in Washington, DC, on May 26, 2009.

Douglas J. Caruso,

Administrator, Farm Service Agency.

[FR Doc. E9–12816 Filed 6–1–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2009

Correction

In notice document E9–10645 beginning on page 21775 in the issue of Monday, May 11, 2009 make the following correction:

On pages 21776 and 21777, the list of State Offices, addresses, telephone numbers, and contact persons is reprinted to read as set forth below:

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, Alabama 36106–3683, (334) 279–3454, TDD (334), 279–3495, Anne Chavers.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, Alaska 99645, (907) 761–7740, TDD (907) 761–8905, Debbie I. Davis.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Avenue, Suite 206, Phoenix, Arizona 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office, 700 West Capitol Avenue, Room 3416, Little Rock, Arkansas 72201–3225, (501) 301–3258, TDD (501) 301–3063, Clinton King.

California State Office, 430 G Street, #4169, Davis, California 95616–4169, (530) 792–5821, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, Colorado 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, Delaware 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, Florida 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601–2768, (706) 546–2164, TDD (706) 546–2034, Dawn Pilgrim.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720, (808) 933–8300, TDD (808) 933–8321, Gayle Kuheana.

Idaho State Office, Suite A1, 9173 West Barnes Drive, Boise, Idaho 83709, (208) 378–5628, TDD (208) 378–5644, Joyce Weinzetl.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, Illinois 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 290–3100 (ext. 426), TDD (317) 290–3343, Mary Hawthorne.

Iowa State Office, 210 Walnut Street Room 873, Des Moines, Iowa 50309, (515) 284–4666, TDD (515) 284–4858, Mary Beth Juergens.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, Kansas 66604–4040, (785) 271–2700, TDD (785) 271–2767, Mike Resnik.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, Kentucky 40503, (859) 224–7325, TDD (859) 224–7422, Beth Moore.

Louisiana State Office, 3727 Government Street, Alexandria, Louisiana 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, Post Office Box 405, Bangor, Maine 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street Suite 2, Amherst, Massachusetts 01002, (413) 253–4315, TDD (413) 253–4590, Paul Geoffroy.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, Michigan 48823, (517) 324–5199, TDD (517) 337–6795, Kelly Darland.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, Minnesota 55125, (651) 602–7804, TDD (651) 602–7830, Thomas Osborne.

Mississippi State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, Mississippi 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, Missouri 65203, (573) 876–9303, TDD (573) 876–9480, Becky Eftink.

Montana State Office, 900 Technology Boulevard, Suite B, Bozeman, Montana 59771, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, Nebraska 68508, (402) 437–5557, TDD (402) 437–5093, Lanae Brasch.

Nevada State Office, 1390 South Curry Street, Carson City, Nevada 89703–9910, (775) 887–1222 (ext. 14), TDD (775) 885–0633, Mona Sargent.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, New Hampshire 03301–5004, (603) 223–6046, TDD (603) 229–0536, Sandra Hawkins.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, New Jersey 08054, (856) 787–7773, TDD (856) 787–7784, Derrick S. Waltz.

New Mexico State Office, 6200 Jefferson Street, NE, Room 255, Albuquerque, New Mexico 87109, (505) 761–4944, TDD (505) 761–4938, Susan Ellzey.

New York State Office, The Galleries of Syracuse, 441 South Salina Street,

Suite 357 5th Floor, Syracuse, New York 13202, (315) 477–6453, TDD (315) 477–6447, Kathryn Boerner.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, North Carolina 27609, (919) 873–2062, TDD (919) 873–2003, Rebecca Dillard.

North Dakota State Office, Federal Building, Room 208, Post Office Box 1737, Bismarck, North Dakota 58502, (701) 530–2046, TDD (701) 530–2113, Barry Borstad.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, Ohio 43215–2477, (614) 255–2409, TDD (614) 255–2554, Cathy Simmons.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, Oklahoma 74074–2654, (405) 742–1076, TDD (405) 742–1007, Tim Henderson.

Oregon State Office, 1201 NE Lloyd Boulevard, Suite 801, Portland, Oregon 97232–1274, (503) 414–3340, TDD (503)414–3387, Barb Brandon.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, Pennsylvania 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave., #654, San Juan, Puerto Rico 00918, (787) 766–5095 (ext. 256), TDD (787) 766–5332, Jan Vargas.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, South Carolina 29201, (803) 765–5870, TDD (803) 765–5697, Lila Moses.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, South Dakota 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, Tennessee 37203–1084, (615) 783–1300, TDD (615) 783–1397, Abby Boggs.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, Texas 76501, (254) 742–9769, TDD (254) 742–9712, Olivia Pinon.

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, Utah 84138, (801) 524–4308, TDD (801) 524–3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, Vermont 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, Virginia 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office, 1835 Black Lake Boulevard, Suite B, Olympia, Washington 98512, (360) 704–7706, TDD (360) 704–7760, Bill Kirkwood.

Western Pacific Territories, Served by Hawaii State Office.

West Virginia, Parkersburg West Virginia County Office, 91 Boyles Lane, Parkersburg, West Virginia 26104, (304) 422–9070, TDD (304) 284–4836, Penny Thaxton.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, Wisconsin 54481, (715) 345–7608 (ext.111), TDD (715) 345–7614, Sara Kendall.

Wyoming State Office, Post Office Box 82601, Casper, Wyoming 82602–5006, (307) 233–6716, TDD (307) 233–6733, Alan Brooks.

[FR Doc. Z9–10645 Filed 6–1–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–848]

Commodity Matchbooks From India: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: We preliminarily determine that commodity matchbooks from India are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request from the respondent, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination in the **Federal Register**.

DATES: *Effective Date:* June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Holly Phelps or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION

Background

Since the initiation of this investigation (*see Commodity Matchbooks from India: Initiation of Antidumping Duty Investigation,* 73 FR 70965 (Nov. 24, 2008) (*Initiation Notice*)), the following events have occurred.

On December 12, 2008, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of commodity matchbooks from India are materially injuring the U.S. industry, and on December 15, 2008, the ITC notified the Department of its findings. *See Commodity Matchbooks from India; Determinations,* Investigation Nos. 701–TA–459 and 731–TA–1155 (Preliminary), 73 FR 77840 (Dec. 19, 2008).

In January 2009, we selected Triveni Safety Matches Pvt. Ltd. (Triveni) as the sole mandatory respondent in this investigation and issued Triveni an antidumping duty questionnaire. *See* Memorandum from James Maeder, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, entitled, ''Antidumping Duty Investigation of Commodity Matchbooks from India: Selection of Respondents for Individual Review,'' dated January 6, 2009.

In February 2009, we received Triveni's response to section A of the questionnaire (*i.e.,* the section covering general information about the company). Also in February 2009, Triveni informed the Department that all the information submitted in its response to section A of the questionnaire may be treated as public information. In February and March

2009, we issued supplemental section A questionnaires to Triveni. In March 2009, we received Triveni's responses to these supplemental questionnaires.

Also in March 2009, Triveni submitted a response to sections B (*i.e.,* the section covering comparison market sales), C (*i.e.,* the section covering U.S. sales), and D (*i.e.,* the section covering constructed value (CV)) of the questionnaire. Because these submissions were so incomplete as to be unusable, we afforded Triveni an opportunity to correct the deficiencies in its responses. At that time, we informed Triveni that it was not currently required to submit a response to section B of the questionnaire in light of the fact that Triveni reported that it had no viable comparison market for commodity matchbooks.

Also in March 2009, we received Triveni's revised response to section C of the questionnaire, as well as a revised response to section D. At that time, we informed Triveni that its revised section C response was unusable in its submitted form because it consisted of a U.S. sales listing, unaccompanied by a narrative response. Therefore, we afforded Triveni a final opportunity to submit a response to section C of the questionnaire.

Also in March 2009, the petitioner [1] made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Therefore, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until May 27, 2009. *See Commodity Matchbooks from India: Notice of Extension of Time Limits for Preliminary Determination of Antidumping Duty Investigation,* 74 FR 12112 (Mar. 23, 2009).

In April 2009, we received Triveni's properly-filed response to section C of the questionnaire, and we issued supplemental questionnaires covering sections C and D to Triveni. In April and May 2009, we received Triveni's responses to these supplemental questionnaires.

On May 19, 2009, the petitioner requested that in the event of a negative preliminary determination in this investigation, the Department postpone the final determination by 60 days. On May 26, 2009, Triveni requested that in the event of an affirmative preliminary determination in this investigation, the Department: (1) Postpone its final determination by 60 days in accordance with 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, *see* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

[1] The petitioner in this investigation is D.D. Bean and Sons Co.

Period of Investigation

The period of investigation (POI) is October 1, 2007, to September 30, 2008. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of this investigation covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[2] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this investigation may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''*Thank You*'' or a generic image such as the American Flag, with store brands (*e.g., Kroger, 7-Eleven, Shurfine or Giant*); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g., Penley Corp. or Diamond Brands*). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation.

All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR 1202.1 *et seq.*

The scope of this investigation excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[3] Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike-anywhere matches (aka ''SAW'' matches), strike-on-box matches (aka ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The merchandise subject to this investigation is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* We

[2] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.,* convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[3] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) If it has no printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

did not receive any comments from parties concerning the scope of this investigation.

Fair Value Comparisons

To determine whether sales of commodity matchbooks from India to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs.

For this preliminary determination, we have determined that Triveni did not have a viable home or third country market during the POI. Therefore, as the basis for NV, we used CV when making comparisons for Triveni in accordance with section 773(a)(4) of the Act.

Export Price/Constructed Export Price

For one U.S. sale made by Triveni, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and CEP methodology was not otherwise warranted based on the facts on the record. For the remaining U.S. sales made by Triveni, we calculated CEP, in accordance with section 772(b) of the Act, because the subject merchandise was sold for the account of Triveni by its subsidiary in the United States to unaffiliated purchasers.

Triveni reported that it sold approximately 900 cartons of Triveni Brand matchbooks (non-white printed matchbooks) to a U.S. customer as part of one of its CEP sales of plain white commodity matchbooks. Triveni stated that it is unable to link the 900 cartons of non-white printed matchbooks to a specific sale or customer. Therefore, as facts available, we have accepted Triveni's data as reported in the U.S. sales listing, and we have assigned these 900 cartons the same control number as plain white matchbooks. However, we intend to examine Triveni's record-keeping practices at verification to confirm that Triveni is unable to provide the missing sales and product characteristic information. In the event that we find that Triveni is able to link these printed matchbooks to a specific U.S. sale, we will revisit this issue in our final determination.

A. Export Price

We based EP on the packed price to an unaffiliated purchaser in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling expenses, ocean freight, and marine insurance.

B. Constructed Export Price

In its May 14, 2009, submission, Triveni stated that it reported as the date of shipment the date that its U.S. freight provider or its U.S. clearing agent issued an invoice to Triveni's U.S. affiliate, Triveni International LLC (TILLC). According to the documents contained in this submission, however, it appears that Triveni reported the date that the merchandise was shipped from India as the date of shipment for U.S. sales. Because we do not have accurate shipment information on the record, as facts available, we have used the earlier of the date that Triveni's U.S. freight provider issued an invoice to TILLC, or the date that Triveni's U.S. clearing agent issued an invoice to TILLC as the date of shipment for purposes of the preliminary determination. We will examine TILLC's shipping documents at verification to determine which of these dates is appropriate for use as the date of shipment for purposes of the final determination.

In accordance with our practice, we used the earlier of the shipment date calculated above, or the U.S. affiliate's invoice date, as the date of sale for CEP sales. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland insurance, U.S. inland freight expenses (*i.e.*, freight from warehouse to the customer), and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses and bank charges), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Because Triveni reported that it had no U.S. dollar borrowings during the POI, we recalculated U.S. credit expenses using the short-term interest rate published by the Federal Reserve, in accordance with our practice. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela,* 67 FR 31273 (May 9, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela,* 67 FR 62119 (Oct. 3, 2002). In addition, we computed the credit period used in our credit recalculation using the revised dates of shipment noted above. Finally, because Triveni did not report an amount for U.S. indirect selling expenses, we computed these expenses using the total expenses and sales value shown in TILLC's 2007 financial statements, less any direct expenses reported in Triveni's responses, as facts available. For further discussion of these adjustments, see the memorandum from Holly Phelps, Analyst, to the File, entitled, ''Calculations Performed for Triveni Safety Matches Pvt. Ltd. for the Preliminary Determination in the 2007–2008 Antidumping Duty Investigation of Commodity Matchbooks from India,'' dated May 27, 2009.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Triveni and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability and Comparison-Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Triveni's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act.

Based on this comparison, we determined that Triveni's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise.

Moreover, we determined that Triveni's volume of sales to each third country was also insufficient to permit proper comparisons. Therefore, we used CV as the basis for calculating NV for Triveni, in accordance with section 773(a)(4) of the Act.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Citric Acid and Certain Citrate Salts from Canada: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 70324 (Nov. 20, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada,* 74 FR 16843 (Apr. 13, 2009).

In this investigation, we found that Triveni had no viable home or third country market. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile,* 63 FR 2664 (Jan. 16, 1998), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411 (June 9, 1998). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in the instant case to make an LOT determination on the basis of sales of the foreign like product in the home or third country market, the Department may use sales of different or broader product lines, sales by other companies, or any other reasonable basis. Because we based the selling expenses and profit for Triveni on the weighted-average selling expenses incurred and profits earned by another Indian producer of comparable merchandise who was not party to this investigation, there is insufficient information on the record in this investigation to allow the Department to make an LOT adjustment or grant a CEP offset to the CV reported by Triveni.

C. Calculation of Normal Value Based on CV

In accordance with section 773(a)(4) of the Act, for Triveni we based NV on CV because there was no viable home or third country market. In accordance with section 773(e) of the Act, we calculated CV based on the sum of Triveni's cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, profit, and U.S. packing costs. We relied on the data reported by Triveni, except in the following instances:

i. We revised the numerator of Triveni's reported G&A expense ratio to include fringe benefits taxes and to exclude selling and transportation expenses as well as foreign exchange losses.

ii. We revised the numerator of Triveni's financial expense ratio to include foreign exchange losses. In addition, we disallowed the reported offset for interest income.

For further discussion of these adjustments, see the memorandum from LaVonne Clark, Accountant, to Neal Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Triveni Safety Matches Pvt. Ltd.,'' dated May 27, 2009 (*Cost Calculation Memo*).

Because Triveni does not have a viable comparison market, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Triveni does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Further, the Department cannot calculate profit based on alternative (ii) of this section because Triveni is the sole respondent in this investigation and 19 CFR 351.405(b) requires that a profit ratio under this alternative be based on home market sales. Therefore, we calculated Triveni's CV profit and selling expenses based on the third alternative, any other reasonable method, in accordance with section 773(e)(2)(B)(iii) of the Act. As a result, as a reasonable method, we calculated Triveni's CV profit and selling expenses using the contemporaneous financial statements of Seshasayee Paper and Boards Limited, an Indian producer/exporter of merchandise in the same general category as commodity matchbooks (*i.e.*, paper products). For further discussion, see the *Cost*

Calculation Memo

Pursuant to alternative (iii), the Department has the option of using any other reasonable method, as long as the amount allowed for profit is not greater than the amount realized by exporters or producers ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,'' the ''profit cap.'' We are unable to calculate the profit cap in this case because, as we noted above, we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category. Therefore, as facts available we are applying option (iii), without quantifying a profit cap. This decision is consistent with the Department's decision in previous cases involving similar circumstances. *See, e.g., Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 51008 (Oct. 5, 2001), and accompanying Issues and Decision Memorandum at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 8. *See Cost Calculation Memo.*

We made no adjustments to CV for differences in circumstances of sale in accordance with sections 773(a)(6)(B)(iii) and 773(a)(8) of the Act and 19 CFR 351.410 because we had inadequate information to do so.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for Triveni.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct Customs and Border Protection (CBP) to suspend liquidation of all entries of commodity matchbooks from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins, as indicated in the chart below, adjusted for export subsidies found in the preliminary determination of the companion countervailing duty investigation. *See Commodity Matchbooks from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 74 FR 15444 (Apr. 6, 2009), (*CVD Preliminary Notice*).

Specifically, consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit or posting of a bond equal to the amount by which the normal value exceeds the EP or CEP, as indicated below, less the amount of the countervailing duty determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (Nov. 17, 2007). Accordingly, for cash deposit purposes, we are subtracting from the applicable cash deposit rate that portion of the rate attributable to the export subsidies found in the affirmative countervailing duty determination for each respondent (*i.e.*, 11.23 percent for Triveni, and 11.23 percent for ''All Others''). After the adjustment for the cash deposit rates attributed to export subsidies, the resulting cash deposit rates will be 80.48 percent for Triveni and 80.48 percent for ''All Others.'' These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Triveni Safety Matches Pvt. Ltd.	91.71
All Others	91.71

''All Others'' Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''All Others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Triveni is the only respondent in this investigation. Therefore, for purposes of determining the ''All Others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Triveni, as referenced above. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from Indonesia,* 72 FR 30753, 30757 (June 4, 2007), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (Oct. 25, 2007).

Disclosure

We will disclose the calculations performed in our preliminary analysis to parties to this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of commodity matchbooks from India are materially injuring, or threatening material injury to, the U.S. industry (*see* section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination (*see* below), the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. *See* 19 CFR 351.309(c). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary

determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On May 26, 2009, Triveni requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Triveni requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 27, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12826 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2007 Antidumping Duty Administrative Review

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

SUMMARY: On March 20, 2009, the Department of Commerce (the Department) published the preliminary results and partial rescission of the 2007 administrative review of the antidumping duty order on brake rotors from the People's Republic of China covering the period April 1, 2007, through August 13, 2007. No interested party commented on the preliminary results or the partial rescission. We have made no changes to the margin calculations. Therefore, the final results do not 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 Review.''

DATES: *Effective Date:* June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review of the antidumping duty order on brake rotors from the People's Republic of China (PRC) covers one mandatory respondent (Yantai Winhere Auto-Part Manufacturing Co., Ltd. (Winhere)) and the following 11 respondents not selected for individual review: Laizhou Auto Brake Equipment Co., Ltd. (LABEC); Laizhou Hongda Auto Replacement Parts Co., Ltd. (Laizhou Hongda); Longkou Jinzheng Machinery Co., Ltd. (Jinzheng); Longkou TLC Machinery Co., Ltd. (Longkou TLC); Qingdao Gren (Group) Co. (Gren); Qingdao Meita Automotive Industry Co., Ltd. (Meita); Xianghe Zichen Casting Company, Ltd. (Xianghe Zichen); Zibo Botai Manufacturing Co., Ltd. (Zibo Botai); Laizhou Luda Sedan Fittings Company, Ltd. (Luda); Laizhou Sanli (Sanli); and Zibo Golden Harvest Machinery Limited Company (ZGOLD). We are rescinding this review with respect to China National Automotive Industry Import & Export Corporation or National Automotive Industry Import & Export Corporation (CAIEC) and Shandong Laizhou CAPCO Industry (Laizhou CAPCO). *See* ''Final Partial Rescission of 2007 Administrative Review'' section below.

On March 20, 2009, the Department published the preliminary results and partial rescission of this administrative review. *See Brake Rotors From the People's Republic of China: Preliminary Results of the 2007 Administrative Review and Partial Rescission,* 74 FR 11911 (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results.* Comments were due April 20, 2009, however, no interested party submitted comments. We have conducted this administrative review in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended (the Act) and sections 19 CFR 351.213 and 19 CFR 351.221 of the Department's regulations.

Period of Review

The period of review (POR) is April 1, 2007, through August 13, 2007.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: Automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States, (*e.g.,* General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (HTSUS).[1] Although the

[1] As of January 1, 2005, the HTSUS classification for brake rotors (discs) changed from 8708.39.5010 to 8708.39.5030. As of January 1, 2007, the HTSUS classification for brake rotors (discs) changed from 8708.39.5030 to 8708.30.5030. *See Harmonized*

Continued

HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Partial Rescission of 2007 Administrative Review

We preliminarily rescinded the review for CAIEC and Laizhou CAPCO because the Department concluded that these companies did not export subject merchandise to the United States during the POR. *See Preliminary Results* at 74 FR 11914. No interested parties filed comments objecting to our preliminary rescission. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding this administrative review with respect to these companies.

Final Results of Review

We determine that the following antidumping duty margins exist in these final results:

BRAKE ROTORS FROM THE PRC

Individually reviewed exporter 2007 administrative review	Weighted-average percent margin (percent)
Yantai Winhere Auto-Part Manufacturing Co., Ltd	0.04 (*de minimis*)
Separate-rate applicant exporters 2007 administrative review	**Weighted-average percent margin (percent)**
Laizhou Auto Brake Equipment Co., Ltd	0.04 (*de minimis*)
Laizhou Hongda Auto Replacement Parts Co., Ltd	0.04 (*de minimis*)
Longkou Jinzheng Machinery Co., Ltd	0.04 (*de minimis*)
Longkou TLC Machinery Co., Ltd	0.04 (*de minimis*)
Qingdao Gren (Group) Co.	0.04 (*de minimis*)
Qingdao Meita Automotive Industry Co., Ltd	0.04 (*de minimis*)
Xianghe Zichen Casting Company, Ltd	0.04 (*de minimis*)
Zibo Botai Manufacturing Co., Ltd	0.04 (*de minimis*)
PRC–wide rate	**Margin (percent)**
PRC-Wide Rate (including Laizhou Luda Sedan Fittings Company, Ltd., Laizhou Sanli and Zibo Golden Harvest Machinery Limited Company).	43.32

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and 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 review. In accordance with 19 CFR 351.212(b)(1), for Winhere, we calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. Because we do not have entered values on the record for Winhere's sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(1), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

As stated in the *Preliminary Results,* for the companies receiving a separate rate that were not selected for individual review (*i.e.,* Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, and Zibo Botai), we calculated an assessment rate based on the weighted-average margin calculated for Winhere, the only mandatory respondent in this review. As Winhere's margin is *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties with respect to these companies. *See* 19 CFR 351.106(c)(2).

With respect to the PRC-wide entity which includes Luda, Sanli and ZGOLD (*i.e.,* the respondents that did not demonstrate their eligibility for separate-rate status), we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 43.32 percent.

Cash Deposit Requirements

The antidumping duty order on brake rotors from the PRC was revoked effective August 14, 2007. *See Brake Rotors From the People's Republic of China: Revocation of Antidumping Duty Order Pursuant to Second Five-Year (Sunset) Review,* 73 FR 36039 (June 25, 2008). As a result, we instructed CBP to terminate the suspension of liquidation of entries of the subject merchandise. Therefore, the collection of cash deposits of antidumping duties on entries of the subject merchandise is no longer required.

Notification to Importers

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties. This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to

Tariff Schedule of the United States (2007) (Rev. 2), available at *www.usitc.gov.*

judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12827 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Notice of Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: On January 7, 2009, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review of the antidumping duty order of certain pasta from Turkey as requested by Marsan Gida Sanayi ve Ticret A.S. (''Marsan''). On April 8, 2009, the Department preliminary found that Marsan is the successor–in-interest to Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (''Gidasa''), and should be accorded the same antidumping duty treatment accorded Gidasa with respect to the antidumping duty order on certain pasta from Turkey.[1] The Department gave interested parties an opportunity to comment on the preliminary results, but received no comments. Therefore, the final results do not differ from the preliminary results of review.

EFFECTIVE DATE: June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** an antidumping duty order on certain pasta from Turkey.[2] On December 3, 2008, Marsan requested that the Department initiate and conduct an expedited changed circumstances review to determine that, for purposes of the antidumping law, Marsan is the successor–in-interest to Gidasa. *See* December 3, 2008, letter from Marsan to the Secretary of Commerce. On January 7, 2009, the Department published a notice of initiation of a changed circumstances review of the antidumping order.[3] On February 23, 2009, the Department requested additional information from Marsan regarding its operations in Turkey. *See* February 23, 2009, changed circumstances review questionnaire from the Department to Marsan. On March 16, 2009, Marsan replied to the Department's questionnaire. *See* March 16, 2009, letter from Marsan to the Secretary of Commerce. On April 14, 2009, the Department published the preliminary results of review and invited interested parties to comment. *See Preliminary Results*. We received no comments.

Scope of Review

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In this case, the Department found that the information submitted by the respondent provided sufficient evidence of changed circumstances to warrant a review to determine whether Marsan is the successor–in-interest to Gidasa. Thus, in accordance with section 751(b) of the Act, the Department initiated a changed circumstances review to determine whether Marsan is the successor–in-interest to Gidasa for purposes of determining antidumping duty liability with respect to imports of certain pasta from Turkey.

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor–in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In accordance with 19 CFR 351.221(c)(3)(i), we determine that

[1] *See Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 74 FR 17153 (April 14, 2009) (''*Preliminary Results*'').

[2] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 68545 (July 24, 1996).

[3] *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta from Turkey*, 74 FR 681 (January 7, 2009).

Marsan is the successor–in-interest to Gidasa. In its December 3, 2008, and March 16, 2009, submissions Marsan provided evidence supporting its claim to be the successor–in-interest to Gidasa. Documentation attached to Marsan's December 3, 2008, submission shows that the acquisition of Gidasa by MGS Marmara Gida Sanayi ve Ticaret A.S. (''MGS'') and the following name change to Marsan resulted in little or no change in management, production facilities, supplier relationships, or customer base. This documentation consists of: (1) organizational charts of both Marsan and Gidasa; (2) the documentation of the name change from Gidasa to Marsan; (3) a list of products before and after the acquisition of Gidasa by MGS; (4) a list of suppliers before and after the name change from Gidasa to Marsan; (5) a list of home market and U.S. customers before and after the name change from Gidasa to Marsan; (6) MGS's articles and notice of incorporation; (7) MGS's 2007 management report to shareholders; and (8) MGS's 2008 draft income statement and balance sheet. The documentation described above demonstrates that there was little to no change in management structure, supplier relationships, production facilities, or customer base and, thus, the operations of Marsan are essentially the same as the operations of Gidasa.

Therefore, we find that Marsan is the successor–in-interest to Gidasa and, thus, should receive the same antidumping duty treatment with respect certain pasta from Turkey as the former Gidasa.

The cash deposit determination from this changed circumstances review will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Marsan participates.

Notification

This notice serves as a final reminder to parties to administrative protective orders (''APO≥s) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: May 27, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12829 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity for appointment to serve as a district export council member.

SUMMARY: The U.S. Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as a member of one of the sixty District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers (USEACs) of the U.S. and Foreign Commercial Service (Commercial Service). DECs combine the energies of more than 1,500 exporters and export service providers to promote U.S. exports. DEC members volunteer at their own expense.

DATES: Nominations for individuals to a DEC must be received by the local USEAC Director by close of business local time on July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Please contact the Director of your local USEAC for more information on DECs and the nomination process. You may identify your local USEAC by searching your Zip Code online at: *http://www.buyusa.gov/home/export.html.* For general program information, contact Dan Keenaghan, National District Export Council Program Manager, U.S. and Foreign Commercial Service, tel. (202) 482–1836.

SUPPLEMENTARY INFORMATION: DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small and medium-sized businesses that are interested in exporting.

Selection Process: 30 positions are held on each of the 60 DECs across the country. Approximately half of the positions are open on each DEC for the four-year term from January 1, 2010 to December 31, 2013. DEC members serve at the pleasure of the Secretary. Nominations are received by the local U.S. Export Assistance Center Director, and recommendations are made to the Secretary in consultation with the local DEC Chairperson. After completion of the vetting process, nominees are selected for appointment to a DEC.

Membership Criteria: The USEAC Directors are interested in nominating highly-motivated people. Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts. The Department strives to have DEC membership reflect the diversity of the local business community, including encompassing a broad range of businesses. DEC member appointments are made without regard to political affiliation.

Authority: 15 U.S.C. 1501 *et seq.,* 15 U.S.C. 4721

Dated: May 26, 2009.

Patricia M. Sefcik,

Acting Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. E9–12810 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP62

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Scallop Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 17, 2009 at 9 a.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton, 407 Squire

Road, Revere, MA 02151; telephone: (781) 284–7200; fax: (781) 284–1886.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Agenda for Wednesday, June 17, 2009

1. Discuss measures under consideration for Scallop Amendment 15. Specifically the advisors will consider potential fishing power adjustments for permit stacking and leasing alternatives that are under consideration for the limited access scallop fishery. The advisors will also provide input on other measures under consideration.

2. They will review and discuss possible issues to consider in Framework Adjustment 21; the action that will implement specifications for the 2010 fishing year. The panel may discuss other business if time permits. The panel's recommendations on both Amendment 15 and Framework 21 will be forwarded to the Scallop Committee to consider at a later date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–12675 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP61

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 17, 2009 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Agenda:

1. The Groundfish Oversight Committee will meet to review public comments on Draft Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). Draft Amendment 16 includes provisions to continue the rebuilding of groundfish stocks and includes proposed measures for both the commercial and recreational groundfish fisheries. After reviewing public comments and reports of the Groundfish Advisory Panel and the Recreational Advisory Panel, the Committee will develop recommendations for the selection of alternatives for a proposed action for the final amendment. The Committee's recommendations will be delivered to the full Council at its meeting in Portland Maine, on June 23 - 25, 2009.

2. Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 27, 2009.

Tracey L Thompson,

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

[FR Doc. E9–12674 Filed 6–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Test Craft Ex-SEA SHADOW (IX 529) and the Hughes Mining Barge (HMB–1)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) hereby gives notice of the availability for donation, under the authority of 10 U.S.C. 7306, of the test craft ex-SEA SHADOW (IX 529) and the Hughes Mining Barge (HMB–1), both located at the Maritime Administration's Suisun Bay National Defense Reserve Fleet, Benicia, CA. Availability for donation was previously announced in a **Federal Register** Notice of Availability dated September 14, 2006. DoN is revising the requirement to display both ex-SEA SHADOW and the HMB–1 either individually or together as a single unit as a static museum/memorial. This notice cancels and supersedes the **Federal Register** Notice of Availability dated September 14, 2006, in Vol. 71, No. 178, of the **Federal Register**.

Ex-SEA SHADOW is contained inside HMB–1, which is a covered floating dry-dock, and is being offered for donation as a single unit. The donee may display the two vessels as currently configured as a single unit, or display only ex-SEA SHADOW as a public museum and reactivate the HMB–1 for commercial use. The Navy will consider applications from municipalities and eligible U.S. non-profit organizations (the lead organization) who have partnered with industry. The lead

organization must agree to display ex-SEA SHADOW as a static public museum. The lead organization may propose to further transfer the HMB–1 to an industry partner for reactivation for commercial purposes. The DoN intends to donate the two vessels as a single unit to the lead organization who must remove the two vessels from DoN custody as a unit.

DATES: The deadline for submission of a Letter of Intent and Executive Summary is sixty (60) days from the date of this notice.

SUPPLEMENTARY INFORMATION: Under the authority of 10 U.S.C. 7306, eligible recipients for the transfer of a vessel for donation include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity.

The transfer of a vessel for donation under 10 U.S.C. 7306 shall be at no cost to the United States Government.

The donee will be required to maintain ex-SEA SHADOW as a static display in a condition that is satisfactory to the Secretary of the Navy.

The Navy has revised its ship donation application process, which applies to ex-SEA SHADOW and HMB–1. Phase I documentation consists of a Letter of Intent and an Executive Summary which must be submitted within sixty (60) days of a **Federal Register** notice. The Navy will provide written notification to those whose Phase I documentation is acceptable to submit Phase II documentation consisting of Business/Financial and Environmental plans, within twelve (12) months of such notice. The Navy will provide written notification to those whose Phase II documentation is acceptable to submit Phase III documentation consisting of Towing, Mooring, Maintenance, and Curatorial/Museum plans, within six (6) months of such notice. Applicants who fail to meet the minimum requirements at any phase may be disqualified from participating in the next phase of this ship donation opportunity.

Actions Required: Within sixty (60) days of this **Federal Register** notice, applicants must complete and submit Phase I documentation for ex-SEA SHADOW/HMB–1, consisting of a Letter of Intent and Executive Summary. The minimum requirements are identified herein. Applicants are advised to take special notice of page length limitations for Phase I documentation.

Phase I of the ship donation application process must include the following documentation addressing the following areas:

a. *Letter of Intent:* The Letter of Intent must include the following:

(1) Identify the specific vessels sought for donation (Ex-SEA SHADOW (IX 539) and HMB–1);

(2) Include a statement that the vessel(s) will be used as a static public display as a museum or memorial without activating any system aboard the vessel(s) for the purpose of navigation or movement of the vessel. If an alternative use for HMB–1 is proposed, identify its proposed use;

(3) Identify the proposed permanent berthing location for vessel(s) used as a static public display, identify the current property owner of the proposed permanent berthing location, and provide evidence from the current property owner of its intent to make the proposed permanent berthing location available to the applicant;

(4) Include a statement that the applicant understands and agrees that it will be solely responsible to obtain, repair, and maintain the vessel(s) used as a static public display at its own expense, in a condition satisfactory to the Secretary of the Navy, in compliance with all Federal, State, and local laws, that no expense shall be incurred by the United States Government, and that the applicant will not seek financing from the United States Government;

(5) Include a statement that the applicant understands and agrees to take delivery of the vessels in an ''as is/where is'' condition, and assume all costs associated with the vessel's removal from Navy custody, including, but not limited to, towing, insurance, berthing, restoration, maintenance and repair, periodic dry-docking, and, ultimately, ship dismantling in the United States;

(6) Include a statement that the applicant will not use the vessel(s) used as a static public display other than as stated, or destroy, transfer, or otherwise dispose of such vessel(s) or any artifacts without the written approval of the Secretary of the Navy or his designee;

(7) Include a statement that the applicant will agree to indemnify, hold harmless, and defend the government from and against all claims, demands, actions, liabilities, judgment costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property;

(8) If the applicant is not a State, Commonwealth, or possession of the United States, or a political subdivision or municipal corporation thereof, or the District of Columbia, the applicant must provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, Section 501(c)(3), or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

(9) If the applicant asserts that it is a corporation or an association whose charter or articles of agreement deny it the right to operate for profit, the applicant must provide a properly notarized copy of its charter, a certificate of incorporation, and a copy of the organization's by-laws;

(10) Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the Letter of Intent to represent the organization and to sign on its behalf for the purpose of obtaining the vessels;

(11) Provide a signed copy of the Assurance of Compliance Form in compliance with Title VI of the Civil Rights Act of 1964. *See* the Ship Donation Web page for the Civil Rights Compliance (Assurance of Compliance) Form located at this link: *http://teamships.crane.navy.mil/Inactiveships/Donation/pdf/material_donation_pdfs/civil_rights_act_of_1964_compliance_form.pdf;*

b. *Executive Summary:* The applicant shall limit the Executive Summary submission to eleven (11) pages total. The Executive Summary must address the following:

(1) *Organizational Description:* Provide an overview of the applicant's organizational structure, functional components, and names of current key leadership and staff positions;

(2) *Market Analysis:* Summarize the local and regional market demand for additional museum/memorial attractions. Succinctly define the target market. Discuss the available demographic information, the existing competition in the local and regional area for visitor museum/memorial attractions, visitor attendance numbers for existing area museum/memorial attractions, and projected visitor attendance for the applicant's proposal;

(3) *Marketing and Sales Outreach:* Outline the overarching marketing strategy for integrating the proposed ship museum/memorial into the local and regional community, and how the applicant plans to penetrate that market. Provide an overview of customer and market analysis, marketing communications, and sales strategies;

(4) *Museum/Memorial Services Assessment:* Discuss the benefits the proposed ship museum/memorial will

offer to visitors/customers and the community. Identify challenges anticipated in establishing a new ship museum/memorial. Cite available data/evidence regarding the willingness of a defined customer base to pay for the services being offered;

(5) *Funding:* Provide a Rough Order of Magnitude (ROM) cost estimate that the applicant anticipates will be required to cover all costs associated with the acquisition/start-up costs of the proposed ship donation transfer, including mooring, towing, environmental surveys and cleanup, dredging, museum development, maintenance, refurbishment of the vessel(s) to be used as a static public display, pier, insurance, legal services, etc. Separately provide a ROM cost estimate of the annual operational and support costs of the proposed ship museum/memorial. In addition, provide a ROM cost estimate of the applicant's cost of dismantling the vessel in the United States upon completion of its use as a museum/memorial or in the event of bankruptcy or inability to properly maintain the vessel(s) to be used as a static public display. If HMB–1 is proposed to be reactivated for commercial use, demonstrate how the HMB–1 will be economically viable;

(6) *Financial:* Provide a summary of projected sources of income to support both the acquisition/start-up costs and the annual operational and support costs for the vessel(s) used as a static public display;

(7) *Environmental:* Discuss the challenges anticipated in meeting the environmental requirements regarding hazardous materials, maintenance of polychlorinated biphenyls (PCB) containing materials, endangered species, dredging disposal, and required environmental permits from all cognizant authorities;

(8) *Mooring:* Discuss the approach to be proposed for the mooring plan for the vessel(s) used as a static public display, including location, design, and mooring system in accordance with U.S. Coast Guard (USCG) requirements;

(9) *Towing:* Discuss the approach to be proposed for relocating the vessels from their current location to the proposed permanent berth location in conformance with the Navy Tow Manual and USCG requirements;

(10) *Maintenance:* Discuss the challenges in restoring and preserving for an infinite period the steel-hulled vessel(s) proposed as a ship museum/memorial; and

(11) *Curatorial/Museum:* Discuss the approach to be proposed for display and interpretation of the vessel(s) used as a static public display, including collection management procedures.

The Phase I documentation (Letter of Intent and Executive Summary) must be submitted to the Navy Inactive Ships Program in hard copy and electronically on a CD–ROM in either an MS Word document or word searchable PDF format. The Phase I documentation must be mailed to: The Columbia Group, 1201 M Street, SE., Suite 020, Washington, DC 20003; marked for the Ship Donation Project Manager (PMS 333). Applicants are discouraged from photocopying, cutting and pasting, and generally providing information which is easily accessible via the Internet and/or is already in the public domain. Original content which is specific to the vessels being donated is of greatest importance to the evaluators.

If the DoN does not receive satisfactory Phase I documentation (Letter of Intent and Executive Summary) from any applicant, the DoN reserves the right to enter into discussions with all applicants in an effort to achieve at least one acceptable submission; or remove the vessels from donation consideration and proceed with disposal of the vessels.

Note that any future changes to guidelines, policy, and law will be reflected in the guidance published on the DoN Ship Donation Web page located at: *http://teamships.crane.navy.mil/Inactiveships/Donation.* Guidance and requirements posted on the Ship Donation Web page shall take precedence over the contents of the **Federal Register** notice. Applicants are advised to read and follow the Web page guidance for the most current set of ship donation requirements.

For Further Information and Submission of Ship Donation Applications, Contact: Ms. Elizabeth Freese of the Naval Sea Systems Command, Navy Inactive Ships Program (PMS 333), telephone number 202–781–4423. Mailed correspondence should be addressed to: The Columbia Group, 1201 M Street, SE., Suite 020, Washington, DC 20003; marked for Ship Donation Project Manager (PMS 333).

Dated: May 26, 2009.

A.M. Vallandingham,

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

[FR Doc. E9–12710 Filed 6–1–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on Wednesday, Thursday and Friday, June 24th–June 26th, 2009 at the Arnold and Mabel Beckman Conference Center, 100 Academy, Irvine, CA 92617. The meeting on Wednesday, June 24th, and Thursday, June 25th, will be from 8 a.m.–2:30 p.m., and the meeting on Friday, June 26th, will be from 8 a.m.–12 p.m.

The purpose of this meeting will be to conduct the SAB quarterly meeting and to reach a consensus and vote on the findings for the FY09 studies directed by the SECAF. The results will also be briefed to USAF senior leadership during the last day of the meeting. This year's studies were: Virtual Training Technologies, Rapid On-Orbit Checkout of Space Systems, and Alternative Sources of Energy for United States Air Force Bases. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed

below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col David J. Lucia, 301–981–7135, United States Air Force Scientific Advisory Board, 1602 California Avenue, Suite #251, Andrews AFB, MD 20762, *david.lucia@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–12801 Filed 6–1–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the summer meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2008 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Thursday, June 18, 2009.

Time: 9 a.m. to 3:30 p.m.

Location: Senate Russell Building, SR 236, Washington, DC.

Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on December 5, 2008 as well as receive other information appropriate to its interests

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 614–1452.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 by 5 p.m. EST on Monday, June 15, 2009 for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 10:45 a.m. to 11:15 a.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments (no longer than two type-written pages) by 5 p.m. EST on Monday, June 15, 2009. The first ten requestors will be notified by 5 p.m. EST on Tuesday, June 16, 2009 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–12754 Filed 6–1–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, Defense Language Institute Foreign Language Center

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, Defense Language Institute Foreign Language Center, Subcommittee of the Army Education Advisory Committee.

Date: 24–25 June 2009.

Place of Meeting: Defense Language Institute Foreign Language Center (Weckerling Center, Presidio of Monterey, Monterey, CA 93944).

Time of Meeting: Approximately 8 a.m. through 4:45 p.m.

Board Mission: The DLIFLC Board of Visitors (BoV) is governed by the Federal Advisory Committee Act (FACA) of 1972, as amended, and is a subcommittee of the Army Education Advisory Committee (AEAC). The purpose of the DLIFLC BoV is to provide the Commandant, through the Army Education Advisory Committee, with advice on matters related to the Institute's mission, specifically: academic policies, staff and faculty development, student success indicators, curricula, educational methodology and objectives, program effectiveness, instructional methods, research, and academic administration.

Board Membership: The Board is composed of 9 members.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Savukinas, ATFL–APO–AR, Monterey, CA 93944, *Robert.Savukinas@us.army.mil.*

SUPPLEMENTARY INFORMATION: Proposed Agenda: The Defense Language Institute Board of Visitors will receive briefings and information on the Institute's Continuing Education Division. The Board will deliberate findings and forward recommendations. All proceedings are open to the public. Advance notice of five (5) working days is required to observe the meeting. Please contact Dr. Savukinas (above) for further instructions.

Public Inquiry at Board Meetings: Any member of the public is permitted to file a written statement with the DLIFLC Board of Visitors. Written statements should be sent to the Board Designated Federal Officer (DFO) at ATFL–APO–AR, Monterey, CA 93944 or faxed to (831) 242–5146. Written statements must be received no later than five (5) working days prior to the next meeting in order to provide time for member consideration.

By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–12756 Filed 6–1–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Laurelwood Housing Area Access, Naval Weapons Station Earle, Colts Neck, NJ

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental

consequences of the proposed action, announces its decision to provide unimpeded access to the Laurelwood housing area located at Naval Weapons Station (NWS) Earle, Colts Neck, New Jersey, as required by its agreement with the developer of the Laurelwood housing area. Unimpeded access will be accomplished through implementing Alternative Alignment 4, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative, which will access NWS Earle via a new entrance south of the main gate along New Jersey Route 34 and terminate at the Laurelwood housing area. This will require the issuance of an easement to the Laurelwood developer over the path of the access road, construction of the access road, construction of a bridge over Esperance Road, and installation of perimeter fencing.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all persons who requested a copy of the FEIS. The complete text of the ROD is available on the public Web site: *http://www.laurelwoodeis.com* along with the complete FEIS and accompanying documentation. Single copies of the ROD will be made available upon request by contacting Naval Facilities Engineering Command Atlantic, Attn: Laurelwood Housing Area EIS Project Manager, Code EV–21 KGB, 6506 Hampton Boulevard, Lafayette River Annex Building A, Norfolk, Virginia 23508.

Dated: May 26, 2009.

A.M. Vallandingham,

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

[FR Doc. E9–12709 Filed 6–1–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access To Retain Talent Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2010–2011 award year.

SUMMARY: The Secretary announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2010–2011 for the student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access to Retain Talent Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs (Title IV, HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, 63G2, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. *Telephone:* (202) 377–3385.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape or compact disk) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2010–2011 the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2008 and December 2009. However, because the Secretary must publish these tables before December 2009, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers for 2009. The Secretary estimates that the increase in the Consumer Price Index for All Urban Consumers (CPI–U) for the period December 2008 through December 2009 will be 4.1 percent. Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA by updating the procedures for determining the income protection allowance for dependent students as well as the income protection allowance tables for both independent students with dependents other than a spouse and independent students without dependents other than a spouse. As amended by the CCRAA, the HEA established new 2010–2011 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2010–2011 has been updated in section 3 of this notice. Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2010–2011 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $4,500. The income protection allowances for parents of dependent students for award year 2010–2011 are:

PARENTS OF DEPENDENT STUDENTS

[Number in college]

Family Size	1	2	3	4	5
2	$16,230	$13,450	.....	.....	.....
3	20,210	17,450	$14,670	.....	.....
4	24,970	22,190	19,430	$16,650	.....
5	29,460	26,680	23,920	21,140	$18,380
6	34,460	31,680	28,920	26,140	23,380

For each additional family member add $3,890.

For each additional college student subtract $2,760.

The income protection allowances (IPA) for independent students with dependents other than a spouse for award year 2010–11 are:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN a SPOUSE

[Number in college]

Family size	1	2	3	4	5
2	$19,690	$16,330	.....	.....	.....
3	24,510	21,160	$17,800	.....	.....
4	30,280	26,910	23,560	$20,190	.....
5	35,730	32,350	29,000	25,640	$22,290
6	41,780	38,410	35,080	31,690	28,350

For each additional family member add $4,710.

For each additional college student subtract $3,350.

The income protection allowances for single independent students and independent students without dependents other than a spouse for award year 2010–11 are:

Marital status	Number in college	IPA
Single	1	$7,780
Married	2	7,780
Married	1	12,460

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a business or farm is excluded from the calculation of an expected contribution because—(1) The income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0.
$1 to $115,000	$0 + 40% of NW.
$115,001 to $345,000	$46,000 + 50% of NW over $115,000.
$345,001 to $580,000	$161,000 + 60% of NW over $345,000.
$580,001 or more	$302,000 + 100% of NW over $580,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,800	1,100
27	5,500	2,200
28	8,300	3,300
29	11,100	4,400
30	13,800	5,500
31	16,600	6,600
32	19,400	7,700
33	22,100	8,700
34	24,900	9,800

DEPENDENT STUDENTS—Continued

If the age of the older parent is	And they are	
	Married	Single
35	27,700	10,900
36	30,400	12,000
37	33,200	13,100
38	36,000	14,200
39	38,700	15,300
40	41,500	16,400
41	42,200	16,700
42	43,300	17,100
43	44,400	17,500
44	45,500	17,900
45	46,600	18,300
46	47,700	18,700
47	48,900	19,100
48	50,100	19,600

DEPENDENT STUDENTS—Continued

If the age of the older parent is	And they are	
	Married	Single
49	51,300	20,100
50	52,900	20,500
51	54,200	21,000
52	55,500	21,500
53	57,100	22,000
54	58,500	22,600
55	60,200	23,200
56	62,000	23,700
57	63,500	24,300
58	65,300	25,000
59	67,200	25,600
60	69,200	26,300
61	71,200	27,000
62	73,200	27,800
63	75,600	28,500
64	77,700	29,300
65 or older	80,300	30,100

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN a SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,800	1,100
27	5,500	2,200
28	8,300	3,300
29	11,100	4,400
30	13,800	5,500
31	16,600	6,600
32	19,400	7,700
33	22,100	8,700
34	24,900	9,800
35	27,700	10,900
36	30,400	12,000
37	33,200	13,100
38	36,000	14,200
39	38,700	15,300
40	41,500	16,400
41	42,200	16,700
42	43,300	17,100
43	44,400	17,500
44	45,500	17,900
45	46,600	18,300

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN a SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
46	47,700	18,700
47	48,900	19,100
48	50,100	19,600
49	51,300	20,100
50	52,900	20,500
51	54,200	21,000
52	55,500	21,500
53	57,100	22,000
54	58,500	22,600
55	60,200	23,200
56	62,000	23,700
57	63,500	24,300
58	65,300	25,000
59	67,200	25,600
60	69,200	26,300
61	71,200	27,000
62	73,200	27,800
63	75,600	28,500
64	77,700	29,300
65 or older	80,300	30,100

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN a SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,800	1,100
27	5,500	2,200
28	8,300	3,300
29	11,100	4,400
30	13,800	5,500
31	16,600	6,600
32	19,400	7,700
33	22,100	8,700
34	24,900	9,800
35	27,700	10,900
36	30,400	12,000
37	33,200	13,100
38	36,000	14,200
39	38,700	15,300
40	41,500	16,400

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN a SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
41	42,200	16,700
42	43,300	17,100
43	44,400	17,500
44	45,500	17,900
45	46,600	18,300
46	47,700	18,700
47	48,900	19,100
48	50,100	19,600
49	51,300	20,100
50	52,900	20,500
51	54,200	21,000
52	55,500	21,500
53	57,100	22,000
54	58,500	22,600
55	60,200	23,200
56	62,000	23,700
57	63,500	24,300
58	65,300	25,000
59	67,200	25,600
60	69,200	26,300
61	71,200	27,000
62	73,200	27,800
63	75,600	28,500
64	77,700	29,300
65 or older	80,300	30,100

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
($3,409) to $14,500	22% of AAI.
$14,501 to $18,200	$3,190 + 25% of AAI over $14,500.
$18,201 to $21,900	$4,115 + 29% of AAI over $18,200.
$21,901 to $25,600	$5,188 + 34% of AAI over $21,900.
$25,601 to $29,300	$6,446 + 40% of AAI over $25,600.
$29,301 or more	$7,926 + 47% of AAI over $29,300.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.

If AAI is—	Then the contribution is—
($3,409) to $14,500	22% of AAI.
$14,501 to $18,200	$3,190 + 25% of AAI over $14,500.
$18,201 to $21,900	$4,115 + 29% of AAI over $18,200.
$21,901 to $25,600	$5,188 + 34% of AAI over $21,900.
$25,601 to $29,300	$6,446 + 40% of AAI over $25,600.
$29,301 or more	$7,926 + 47% of AAI over $29,300.

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,500 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000	$15,000 & up	All
Alabama	3%	2%	2%
Alaska	2%	1%	0%
Arizona	4%	3%	3%
Arkansas	4%	3%	3%
California	9%	8%	5%
Colorado	5%	4%	3%
Connecticut	8%	7%	4%
Delaware	5%	4%	3%
District of Columbia	7%	6%	6%
Florida	4%	3%	1%
Georgia	5%	4%	4%
Hawaii	5%	4%	4%
Idaho	5%	4%	4%
Illinois	6%	5%	2%
Indiana	4%	3%	3%
Iowa	5%	4%	3%
Kansas	5%	4%	3%
Kentucky	5%	4%	4%
Louisiana	3%	2%	2%
Maine	6%	5%	4%
Maryland	8%	7%	5%
Massachusetts	7%	6%	4%
Michigan	5%	4%	3%
Minnesota	6%	5%	4%
Mississippi	3%	2%	2%
Missouri	5%	4%	3%
Montana	5%	4%	3%
Nebraska	5%	4%	3%
Nevada	3%	2%	1%
New Hampshire	5%	4%	1%
New Jersey	9%	8%	4%
New Mexico	3%	2%	2%
New York	10%	9%	6%
North Carolina	6%	5%	4%
North Dakota	3%	2%	1%
Ohio	6%	5%	4%
Oklahoma	4%	3%	3%
Oregon	7%	6%	5%
Pennsylvania	5%	4%	3%
Rhode Island	7%	6%	4%
South Carolina	5%	4%	3%
South Dakota	2%	1%	1%

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000	$15,000 & up	All
Tennessee	2%	1%	1%
Texas	3%	2%	1%
Utah	5%	4%	4%
Vermont	6%	5%	3%
Virginia	7%	6%	4%
Washington	3%	2%	1%
West Virginia	3%	2%	2%
Wisconsin	7%	6%	4%
Wyoming	2%	1%	1%
Other	3%	2%	2%

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grant; 84.376 National Science and Mathematics Access to Retain Talent Grant)

Program Authority: 20 U.S.C. 1087rr.

Dated: May 27, 2009.

James F. Manning,

Acting Chief Operating Officer Federal Student Aid.

[FR Doc. E9–12668 Filed 6–1–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–556–001]

Commission Information Collection Activities (FERC–556); Comment Request; Submitted for OMB Review

May 26, 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 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74FR7679, 2/19/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by July 6, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0075 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–556–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp*. To file the document electronically, access the Commission's Web site, click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. New users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–556–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: The Commission uses the FERC Form No. 556 (Cogeneration and Small Power Production, OMB Control Number 1902–0075) to implement the statutory

provisions in Federal Power Act (FPA) section 3 (16 USC 792–828c) and sections 201 and 210 of the Public Utility Regulatory Policies Act (PURPA) of 1978 (16 USC 2601). These statutes authorize the Commission to encourage cogeneration and small power production and to prescribe such rules as necessary in order to carry out these statutory directives. Commission regulations pertaining to FERC Form No. 556 can be found in 18 CFR 131.80 and 18 CFR Part 292.

A primary objective of PURPA, as indicated in section 2 of the FPA, is the conservation of energy through efficient use of energy resources and facilities by electric utilities. One means of achieving this goal is to encourage production of electric power by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use other wastes and renewable resources as fuel. Congress, through PURPA, established various regulatory benefits to encourage the development of small power production facilities and cogeneration facilities which meet certain technical and corporate criteria. Facilities that meet these criteria are deemed qualifying facilities (QFs).

The Energy Policy Act of 2005 (EPAct 2005), and in particular section 1253(a), added section 210(m) to the PURPA providing, among other things, for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities, if the Commission finds that the QF has nondiscriminatory access to one of three categories of markets defined in section 210(m)(1)(A), (B) or (C). Thus, to relieve an electric utility of its mandatory purchase obligation under PURPA, the Commission has to identify which, if any, markets meet the criteria contained in 210(m)(1)(A), (B) or (C), and, if such markets are identified, it must determine whether QFs have nondiscriminatory access to those markets.

In 18 CFR Part 292, the Commission provides: (1) QF certification criteria, (2) QF application information, (3) a description of some of the benefits afforded QFs, and (4) transaction obligations that electric utilities have with respect to QFs.

Among the PURPA benefits identified in Part 292, are the requirements for electric utilities: (1) To make avoided cost information and system capacity needs available to the public; (2) to purchase energy and capacity from QFs favorably priced on the basis of the avoided cost of the power that is displaced by the QF power (*i.e.,* the incremental cost to the purchasing utility if it had generated the displaced power or purchased it from another source); (3) to sell backup, maintenance, and other power services to QFs at rates based on the cost of rendering the services; (4) to provide certain interconnection and transmission services priced on a nondiscriminatory basis; and (5) to operate in ''parallel'' with other interconnected QFs so that they may be electrically synchronized with electric utility grids.

A blank FERC Form No. 556 may be downloaded from the Commission's Web site at *http://www.ferc.gov/docs-filing/hard-fil.asp#556.* Click on the Electric tab, then click the Form No. 556 link, and choose from an MS Word or RTF format (in the Downloads & Links column). Examples of filings may be viewed through the Commission's eLibrary system. Click on the red eLibrary link found at the top of any of the Commission's web pages, and choose General Search. Under Class/Type Info, choose Type: Qualifying Facility Application or PURPA Energy Utility Filing; then click the Submit button at the bottom of the page.

Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the existing reporting requirements in FERC–556.

Burden Statement: The estimated annual public reporting burden and cost for FERC–556 follow.

FERC–556	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
FERC Certification	4	1	20	80
Self Certification	820	1	3	2460
Total	824			2540

The estimated total cost to respondents [1] is $156,670.36 [2,540 hours divided by 2,080 hours per year, times $128,297 equals $156,670.36]. The average cost per respondent is $190.13.

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) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) 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 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 estimates 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

[1] The average employee works 2,080 hours per year. The estimated average annual cost per employee is $128,297.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12701 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12704–002]

Tidewalker Associates; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

May 26, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 12704–002.

c. *Dated Filed:* March 25, 2009.

d. *Submitted By:* Tidewalker Associates.

e. *Name of Project:* Half Moon Cove Tidal Power Project.

f. *Location:* Cobscook Bay, between the City of Eastport and Town of Perry, Washington County, Maine. No federal lands are involved.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Normand Laberge, Tidewalker Associates, 46 Place Cover Road, Trescott, Maine 04652. (207) 733–5513.

i. *FERC Contact:* Steve Kartalia, *Stephen.kartalia@ferc.gov,* (202) 502–6131.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Tidewalker Associates as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Tidewalker Associates filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued a Scoping Document on May 26, 2009.

n. A copy of the PAD and the scoping document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and the scoping document, as well as study requests. All comments on the PAD and the scoping document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, Half Moon Cove Tidal Power Project) and number (P–12704–002), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or the scoping document, and any agency requesting cooperating status must do so by July 23, 2009.

Comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, these meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday June 24, 2009.

Time: 10 a.m.

Location: Marine Trades Center, 16 Deep Cove Road, Eastport, ME.

Phone: Normand Laberge at (207) 733–5513.

Evening Scoping Meeting

Date: Wednesday June 24, 2009.

Time: 7 p.m.

Location: Marine Trades Center, 16 Deep Cove Road, Eastport, ME.

Phone: Normand Laberge at (207) 733–5513.

The scoping document, which outlines the subject areas to be addressed in the environmental document, was mailed to the

individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, Scoping Document 2 may or may not be issued.

Site Visit

Tidewalker Associates will conduct a site visit of the project at 2 p.m. on Tuesday June 23, 2009. All participants should meet where Old Route 190 terminates at the shore on the Eastport end of the proposed dam location. See Figure 2 of the scoping document for a map. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Normand Laberge.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12698 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI09–7–000]

Inside Passage Electric Cooperative; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

May 26, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI09–7–000.

c. *Date Filed:* April 16, 2009.

d. *Applicant:* Inside Passage Electric Cooperative.

e. *Name of Project:* Gartina Falls Hydroelectric Project.

f. *Location:* The proposed Gartina Falls Hydroelectric Project will be located on Gartina Creek, near the town of Hoonah on Chichagof Island, Alaska, affecting T. 44 S, R. 65 E, secs. 2, 11, 34, and 35, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Peter A. Bibb, Operations, P.O. Box 210149, 12480 Mendenhall Loop Road, Auke Bay, AK 99821, *telephone:* (907) 789–3196, ext. 30; *Fax:* (907) 790–8517; *e-mail: http://www.pbibb@ak.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments, protests, and/or motions:* June 26, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.

Please include the docket number (DI09–7–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Gartina Creek Hydropower Project will include: (1) A 15-foot-high, 280-foot-long concrete-and-rock-fill diversion dam; (2) a concrete intake structure and sluiceway, and a 54-inch-diameter, 200-foot-long steel pipe penstock to the powerhouse; (3) a two-level powerhouse, approximately 20-foot-long and 2-foot-wide, and 25-foot-high; (4) a 4-mile-long transmission line to an interconnection near the Hoonah airport; (5) a tailrace emptying into Gartina Creek; and (6) appurtenant facilities. The proposed project will not be connected to an interstate grid, and will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of

the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12699 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12495–002]

Cascade Creek, LLC; Notice of Scoping Meeting and Site Visit and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process; Notice of Intent To Prepare Environmental Impact Statement

May 26, 2009.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 12495–002.

c. *Applicant:* Cascade Creek, LLC.

d. *Name of Project:* Cascade Creek Hydroelectric Project.

e. *Location:* On Swan Lake and Cascade Creek, approximately 15 miles northeast of Petersburg, Alaska. The project would occupy lands of the Tongass National Forest.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

g. *Applicant Contact:* Chris Spens, Project Manager, Cascade Creek LLC, 3633 Alderwood Ave., Bellingham, WA 98225; 360–738–9999, *e-mail: cspens@thomasbayhydro.com.*

h. *FERC Contact:* David Turner, at (202) 502–6091.

i. *Deadline for filing scoping comments:* July 20, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

j. The project would consist of: (1) Swan Lake, with a high-flood lake surface elevation of 1,520 feet and surface area of 579 acres at the high-flood elevation; (2) a 9-foot-diameter lake siphon on Swan Lake, housed in a 46-foot-long, 34-foot-wide, and 25-foot-high concrete intake control structure that would also provide for a helicopter landing area; (3) approximately 3 miles of predominately-unlined rock tunnel; (4) a 600-foot-long, 9-foot-diameter buried steel penstock; (5) a 120-foot-long, 60-foot-wide powerhouse with three 23-MW vertical-shaft pelton-type turbines; (6) two housing units for construction workers; (7) a 400-foot-long, 40-foot-wide tailrace connecting the powerhouse to Thomas Bay; (8) new dock and/or road facilities; (9) a transmission line beginning at the powerhouse and extending via a combination of overhead and underwater lines to the existing Scow Bay substation in Petersburg; and (10) appurtenant facilities.

k. Scoping Process

Cascade Creek, LLC (Cascade Creek) is using the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, Cascade Creek will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Cascade Creek Hydroelectric Project.

Although Cascade Creek's intent is to prepare an EA, the Commission will prepare an Environmental Impact Statement (EIS) for the project. This meeting will satisfy the NEPA scoping requirements.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

Cascade Creek and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting: Thursday, June 18, 2009, 9 a.m., Tides Inn, 307 North 1st St., Petersburg, AK 99833.

Evening Meeting: Thursday, June 18, 2009, 7 p.m., Tides Inn, 307 North 1st St., Petersburg, AK 99833.

To help focus discussions, Scoping Document 1 was mailed May 22, 2009, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine

the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Cascade Creek in defining and clarifying the issues to be addressed in the APEA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12702 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 21, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–172–004; ER09–173–004; ER06–1355–004; ER09–174–002.

Applicants: Evergreen Wind Power, LLC, Canandaigua Power Partners LLC, Evergreen Wind Power V, LLC, Canandaigua Power Partners II, LLC.

Description: Notification of Change in Status of Canandaigua Power Partners LLC, *et al.*

Filed Date: 05/15/2009.

Accession Number: 20090515–5145.

Comment Date: 5 p.m. Eastern Time on Friday, June 05, 2009.

Docket Numbers: ER09–747–001.

Applicants: Robbins Energy LLC.

Description: Robbins Energy, LLC submits First Substitute Original Sheet 1 and 6 to FERC Rate Schedule 1, to be effective 7/1/09.

Filed Date: 05/18/2009.

Accession Number: 20090519–0168.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–1168–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits First Revised Service Agreement 320 to FERC Electric Tariff, Second Revised Volume 6.

Filed Date: 05/18/2009.

Accession Number: 20090519–0218.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–1169–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits an Amendment 2 to the Facilities and Interconnection Agreement dated as of 2/2/09.

Filed Date: 05/18/2009.

Accession Number: 20090519–0164.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–1170–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Co submits modifications to its Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume 8.

Filed Date: 05/18/2009.

Accession Number: 20090519–0165.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 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. E9–12727 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

May 19, 2009.

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

Docket Numbers: RP09–589–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline, LLC submits two amendments to existing negotiated rate Transportation Rate Schedule FTS Agreement with Enjet, Inc.

Filed Date: 05/14/2009.

Accession Number: 20090514–0127.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 26, 2009.

Docket Numbers: RP09–590–000.

Applicants: Southeast Supply Header, LLC.

Description: Southeast Supply Header, LLC submits First Revised Sheet 345 to its FERC Gas Tariff, Original Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–591–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Second Revised Sheet 515 and 633 to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–592–000.

Applicants: Questar Southern Trails Pipeline Company.

Description: Questar Southern Trails Pipeline Company submits First Revised

Sheets 67 & 68 *et al* to its FERC Gas Tariff, Original Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0109.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–593–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits First Revised Sheets 70–71 et al to its FERC Gas Tariff, Second Revised Volume 1–A, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0108.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–594–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Gulfstream Natural Gas System, LLC submits Second Revised Sheet 0 *et al* to its FERC Gas Tariff, Original Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0119.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–595–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Second Revised Sheet 316 *et al* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0118.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–596–000.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits Third Revised Sheet 107 *et al* to its FERC Gas Tariff, First Revised Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0117.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–597–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company, LLC submits Third Revised Sheet 108 & 147 to its FERC Gas Tariff, Original Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0116.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–598–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits First Revised Sheet 279 to its FERC Gas Tariff, Original Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0115.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–599–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Fourth Revised Sheet 301 to its FERC Gas Tariff, First Revised Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–600–000.

Applicants: Algonquin Gas Transmission Company.

Description: Algonquin Gas Transmission, LLC submits Second Revised Sheet 517 *et al* to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 6/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: RP09–601–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Eleventh Revised Sheet No 290A *et al* to FERC Gas Tariff, Second Revised Volume No 1A.

Filed Date: 05/18/2009.

Accession Number: 20090518–0321.

Comment Date: 5 p.m. Eastern Time on Monday, June 01, 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. E9–12738 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 27, 2009.

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

Docket Numbers: RP09–602–000.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits notice to Mid-America Agri Products/Horizon LLC on 5/19/09 that firm transportation service agreement 551784, relating to service under KMIGT Rate Schedule FT *etc.*

Filed Date: 05/19/2009.

Accession Number: 20090520–0092.

Comment Date: 5 p.m. Eastern Time on Monday, June 01, 2009.

Docket Numbers: RP09–603–000.

Applicants: Centra Pipelines Minnesota.

Description: Centra Pipelines Minnesota Inc submits Fifth Revised Sheet 35 the Index of Shippers, for

which Centra Minnesota requests an effective date of 6/1/09.

Filed Date: 05/20/2009.

Accession Number: 20090520–0098.

Comment Date: 5 p.m. Eastern Time on Monday, June 01, 2009.

Docket Numbers: RP09–604–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Pipeline, LLC submits a Negotiated Rate Agreement with Eni USA Gas Marketing, LLC for which Cameron Interstate requests an effective date 6/30/09.

Filed Date: 05/20/2009.

Accession Number: 20090520–0097.

Comment Date: 5 p.m. Eastern Time on Monday, June 01, 2009.

Docket Numbers: RP09–605–000.

Applicants: El Paso Natural Gas Company.

Description: Penalty Crediting Report for calendar year 2008 of El Paso Natural Gas Company.

Filed Date: 05/20/2009.

Accession Number: 20090520–5093.

Comment Date: 5 p.m. Eastern Time on Monday, June 01, 2009.

Docket Numbers: RP09–606–000.

Applicants: Vector Pipeline L.P.

Description: Vector Pipeline, LP submits Substitute Sixth Revised Sheet 159 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 05/21/2009.

Accession Number: 20090521–0051.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 02, 2009.

Docket Numbers: RP09–607–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet 201 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 05/21/2009.

Accession Number: 20090521–0050.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 02, 2009.

Docket Numbers: RP09–608–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits Second Revised Sheet No. 117 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 05/22/2009.

Accession Number: 20090522–0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 03, 2009.

Docket Numbers: RP09–609–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Company, LP submits Twenty-Third Revised Sheet 4 to its FERC Gas Tariff, Third Revised Volume 1 to be effective 6/1/09.

Filed Date: 05/22/2009.

Accession Number: 20090522–0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 03, 2009.

Docket Numbers: RP09–611–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corp submits Second Revised Sheet 212 to FERC Gas Tariff, Original Volume 1, effective 8/1/09 under RP09–611.

Filed Date: 05/26/2009.

Accession Number: 20090527–0026.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: RP09–612–000.

Applicants: CenterPoint Energy–Mississippi River Transmission Corporation.

Description: CenterPoint Energy–Mississippi River Transmission Corporation submits Second Revised Sheet 0 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 05/26/2009.

Accession Number: 20090527–0025.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12737 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

May 27, 2009.

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

Docket Numbers: RP00–426–047.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 88 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 5/15/09.

Filed Date: 05/15/2009.

Accession Number: 20090518–0112.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Docket Numbers: RP09–317–001.

Applicants: Texas Gas Transmission, LLC.

Description: Additional Information of Texas Gas Transmission, LLC.

Filed Date: 03/13/2009.

Accession Number: 20090313–5050.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Docket Numbers: CP03–342–007, CP03–343–004.

Applicants: Discovery Gas Transmission LLC.

Description: Amendment to Application of Discovery Gas Transmission LLC.

Filed Date: 03/13/2009.

Accession Number: 20090318–5125.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12736 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 26, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–80–000.

Applicants: North Allegheny Wind, LLC, Gamesa Energy USA, LLC, DEGS Wind I, LLC.

Description: Application of Gamesa Energy USA, LLC, *et al.* for Disposition of Jurisdictional Facilities, Request for Shortened Notice Period and Expedited Treatment, and Request for Confidential Treatment.

Filed Date: 05/21/2009.

Accession Number: 20090521–5031.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: EC09–81–000.

Applicants: Barclays Bank PLC, Barclays Capital Energy, Inc., Barclays PLC.

Description: Application for Authorization to Sell Securities and Request for Expedited Treatment.

Filed Date: 05/22/2009.

Accession Number: 20090522–5117.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: EC09–82–000.

Applicants: Barclays Bank PLC, Barclays Capital Energy, Inc., Barclays PLC.

Description: Application for Authorization to Sell Securities and Request for Expedited Treatment.

Filed Date: 05/22/2009.

Accession Number: 20090522–5118.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: EC09–83–000.

Applicants: Rail Splitter Wind Farm, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Rail Splitter Wind Farm, LLC.

Filed Date: 05/22/2009.

Accession Number: 20090522–5130.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–43–000.

Applicants: Hoosier Wind Project, LLC.

Description: Exempt Wholesale Generator Self Certification Notice of Hoosier Wind Project, LLC.

Filed Date: 05/22/2009.

Accession Number: 20090522–5067.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4590–028.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits change in status report relating to PSCo's market-based rate authority.

Filed Date: 05/20/2009.

Accession Number: 20090521–0095.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER08–824–003.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits filing in compliance with Commission 06/12/08 order.

Filed Date: 05/21/2009.

Accession Number: 20090522–0128.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–582–002.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submits an amendment to the eleventh revised Repair and Maintenance Agreement signed between Indiana Michigan Power Company *et al.* on 12/11/89.

Filed Date: 05/20/2009.

Accession Number: 20090521–0091.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–503–001.

Applicants: BC Landfill Energy LLC.

Description: BC Landfill Energy, LLC submits revisions to its FERC Electric Tariff No. 1 *et al.*

Filed Date: 05/22/2009.

Accession Number: 20090522–0112.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–504–001.

Applicants: AC Landfill Energy, LLC.

Description: AC Landfill Energy, LLC submits amendments to its FERC Electric Tariff, Original Volume No. 1 pursuant to FERC's 5/1/09 Order.

Filed Date: 05/22/2009.

Accession Number: 20090522–0108.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–505–001.

Applicants: WC Landfill Energy, LLC.

Description: WC Landfill Energy submits First Revised Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1.

Filed Date: 05/22/2009.

Accession Number: 20090522–0107.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–613–001.

Applicants: Cross Sound Cable Company, LLC.

Description: Cross-Sound Cable Company, LLC submits filing in compliance with the 3/31/09 Order, to incorporate into Attachment Z to Schedule 18 of the ISO NE OATT Wholesale Electric Quadrant Standard.

Filed Date: 05/21/2009.

Accession Number: 20090522–0127.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–747–000.

Applicants: Robbins Energy LLC.

Description: Robbins Energy LLC submits a revised Asset Appendix to its Application filed on 2/13/09 for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.

Filed Date: 05/18/2009.

Accession Number: 20090520–0020.

Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–895–001.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits for acceptance Second Substitute First Revised Sheet 2 *et al.* to FERC Electric Tariff, Rate Schedule 118.
Filed Date: 05/20/2009.
Accession Number: 20090521–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–914–001.
Applicants: Otter Tail Power Company.
Description: Otter Tail Power Company submits for acceptance Substitute Original Service Agreement 42 *et al.* to FERC Electric Tariff, Original Volume 2.
Filed Date: 05/22/2009.
Accession Number: 20090526–0065.
Comment Date: 5 p.m. Eastern Time on Monday, June 01, 2009.

Docket Numbers: ER09–1075–001.
Applicants: Falcon Energy, LLC.
Description: Falcon Energy, LLC submits an Amended, Revised and Restated Application for Market-Based Rate Authorization and Request for Waivers and Blanket Authorizations etc.
Filed Date: 05/18/2009.
Accession Number: 20090519–0167.
Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–1146–000.
Applicants: Lafarge Midwest, Inc.
Description: Application of LaFarge Midwest, Inc. for an Order granting market-based rate tariff, granting blanket authorizations and waiving regulations and for expedited review.
Filed Date: 05/21/2009.
Accession Number: 20090521–0049.
Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–1171–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp. submits an informational filing that is intended to provide notice regarding the ISO's further revised transmission access charges effective 3/1/09.
Filed Date: 05/19/2009.
Accession Number: 20090520–0003.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009.

Docket Numbers: ER09–1172–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits an executed service agreement for Firm Point-to-Point Transmission Service between SPP as Transmission Provider and Kansas City Board of Public Utilities as Transmission Customer.
Filed Date: 05/19/2009.
Accession Number: 20090520–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009.

Docket Numbers: ER09–1173–000.
Applicants: Vermont Transco LLC.
Description: Vermont Transco LLC submits Large Generator Agreement *et al.*
Filed Date: 05/18/2009.
Accession Number: 20090520–0001.
Comment Date: 5 p.m. Eastern Time on Monday, June 08, 2009.

Docket Numbers: ER09–1174–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed service agreement for firm point-to-point transmission service with Kansas City Board of Public Utilities.
Filed Date: 05/19/2009.
Accession Number: 20090520–0093.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009.

Docket Numbers: ER09–1175–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits revised appendix A for Second Revised Rate Schedule FERC No. 280 *et al.*
Filed Date: 05/19/2009.
Accession Number: 20090520–0094.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009.

Docket Numbers: ER09–1176–000.
Applicants: Xcel Energy Services Inc.
Description: NSP Companies submits proposed termination of various Market-Based Electric Service Agreement under the NSP FERC Electric Tariff, Original Volume 5 etc.
Filed Date: 05/20/2009.
Accession Number: 20090521–0088.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–1177–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Large Generator Interconnection Agreement between SPP as Transmission Provider, KC&L Greater Missouri Operations Company as Transmission Owner *et al.*
Filed Date: 05/20/2009.
Accession Number: 20090521–0092.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–1178–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits its Second Revised Volume 6 Open Access Transmission Tariff.
Filed Date: 05/20/2009.
Accession Number: 20090521–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–1179–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co. submits an amendment to extended agreements for wholesale distribution service and interconnection.
Filed Date: 05/20/2009.
Accession Number: 20090521–0089.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: ER09–1181–000.
Applicants: Hoosier Wind Project, LLC.
Description: Hoosier Wind, LLC submits petition requesting acceptance of FERC Electric Tariff, Original Volume No. 1.
Filed Date: 05/22/2009.
Accession Number: 20090522–0111.
Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1182–000.
Applicants: NaturEner Montana Wind Energy 2, LLC.
Description: NaturEner Montana Wind Energy 2, LLC submits a application for market-based rate authority, request for waivers and pre-approvals etc.
Filed Date: 05/22/2009.
Accession Number: 20090522–0106.
Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1183–000.
Applicants: NaturEner Glacier Wind Energy 2, LLC.
Description: NaturEner Glacier Wind Energy 2, LLC submits application for market-based rate authority, *et al.*
Filed Date: 05/22/2009.
Accession Number: 20090522–0109.
Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1184–000.
Applicants: NaturEner Power Watch, LLC.
Description: NaturEner Power Watch, LLC submits application for market-based rate authority, *et al.*
Filed Date: 05/22/2009.
Accession Number: 20090522–0110.
Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1185–000.
Applicants: Entergy Services, Inc.
Description: Entergy submits First Revised Sheet 54 to Third Revised Rate Schedule FERC No. 94 *et al.*
Filed Date: 05/21/2009.
Accession Number: 20090522–0069.
Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–1186–000.
Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits for acceptance Third Revised Sheet 140.01 *et al.* to FERC Electric Tariff, Original Volume 2 to be effective 7/20/09.

Filed Date: 05/21/2009.

Accession Number: 20090522–0068.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–1187–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits proposed revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff etc.

Filed Date: 05/21/2009.

Accession Number: 20090522–0070.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 2009.

Docket Numbers: ER09–1188–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits a letter of agreement for Phase 1 of a temporary project.

Filed Date: 05/22/2009.

Accession Number: 20090522–0093.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1189–000.

Applicants: Hess Energy, Inc.

Description: Hess Energy, Inc submits Notice of Cancellation of First Revised Sheet 1 *et al.* to FERC Electric Tariff, Rate Schedule 1 to be effective 7/21/09.

Filed Date: 05/22/2009.

Accession Number: 20090522–0098.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1190–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits First Revised Sheet 27 *et al* to FERC Rate Schedule 286.

Filed Date: 05/22/2009.

Accession Number: 20090522–0100.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1191–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Original Sheet 714C to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 6/23/09.

Filed Date: 05/22/2009.

Accession Number: 20090522–0099.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Docket Numbers: ER09–1192–000.

Applicants: Southwest Power Pool Inc.

Description: Southwest Power Pool Inc submits for acceptance Second Revised Sheet 2 *et al* to FERC Original Volume 4—Bylaws to be effective 7/22/09.

Filed Date: 05/22/2009.

Accession Number: 20090526–0064.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–52–006.

Applicants: New York Independent System Operator, Inc.

Description: New York Transmission Owners *et al.* submits revisions to Attachment Y of the NYISO Open Access Transmission Tariff to address the Commission's directives in the October 16, 2008 Order.

Filed Date: 05/19/2009.

Accession Number: 20090520–0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR09–4–000.

Applicants: North American Electric Reliability Corp.

Description: Petition of North American Electric Reliability Corporation for Approval of Revisions to Bylaws of Southwest Power Pool, Inc.

Filed Date: 05/21/2009.

Accession Number: 20090521–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, June 11, 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.

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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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12728 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–55–000]

County of Butte, CA Complainant v. California Department of Water Resources Respondent; Notice of Complaint

May 26, 2009.

Take notice that on May 22, 2009, pursuant to section 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2008) and section 206 of the Federal Power Act, 16 U.S.C. 825(e) (2000), the County of Butte, California (Complainant) filed a formal complaint against the California Department of Water Resources (Respondent) alleging that the respondent violated the Commission's guidelines regarding recreational development and public safety, as well as its license for the Oroville Facilities project.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests, must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12729 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–900–001; ER09–901–001; ER09–902–001]

Sky River LLC, Victory Garden Phase IV, LLC, FPL Energy Cabazon Wind, LLC; Notice of Compliance Filing

May 22, 2009.

Take notice that on May 21, 2009, Sky River LLC, Victory Garden Phase IV, LLC, and FPL Energy Cabazon Wind, LLC filed an amendment to market-based rate tariffs.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12695 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1147–000]

Ameren Services Company; Notice of Filing

May 22, 2009.

Take notice that on May 15, 2009, Ameren Services Company as agent for Central Illinois Light Company tendered for filing of an executed service agreement for Wholesale Distribution Service with Illinois Municipal Electric Agency on behalf of the Village of Riverton.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12696 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1141–000]

JP Morgan Commodities Canada Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 22, 2009.

This is a supplemental notice in the above-referenced proceeding of JP Morgan Commodities Canada Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the Applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 11, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12697 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–6–000]

Pipeline Siting and Stakeholder Involvement Workshop; Supplemental Notice of Pipeline Siting and Stakeholder Involvement Workshop

May 26, 2009.

On May 15, 2009, the Commission issued a notice scheduling a workshop in the above-captioned proceeding. In addition to the information provided in that notice, a free Webcast of the meeting/conference is available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12703 Filed 6–1–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8909–9]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Three New Reference Methods and Four New Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of three new reference methods and four new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, three new reference methods and four new equivalent methods. The reference methods include one for measuring carbon monoxide (CO) in ambient air (Ecotech Serinus 30 Carbon Monoxide Analyzer) and two for measuring $PM_{10-2.5}$ in the ambient air (a Thermo Scientific Partisol® Model 2000 sampler pair and a Partisol®-Plus Model 2025 Sequential sampler pair). The four new equivalent methods are two for measuring $PM_{2.5}$ and two for measuring $PM_{10-2.5}$ in the ambient air (Thermo Scientific Partisol® Model 2000–D, and Dichotomous Partisol®-Plus Model 2025–D Sequential, air samplers).

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. *Phone:* (919) 541–5691, *e-mail: Kaushik.Surender@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of one new reference method for measuring concentrations of CO, two new reference methods for measuring $PM_{10-2.5}$, two new equivalent methods for measuring $PM_{2.5}$, and two new equivalent methods for measuring $PM_{10-2.5}$ in the ambient air. These designations are made under the provisions of 40 CFR Part 53, as amended on October 17, 2006 (71 FR 61271).

The new reference method for CO is an automated method that utilizes the measurement principle based on non-dispersive infra-red adsorption photometry (combined with gas filter correlation) and the calibration procedure specified in Appendix C of 40 CFR Part 50. The newly designated reference method is identified as follows:

RFCA–0509–174, ''Ecotech Serinus 30 Carbon Monoxide Analyzer'', operated in the range of 0–50 ppm, with a five-micron Teflon® filter element installed, and with the following selected: Background-Enabled, Control Loop-Enabled, Diagnostic Mode-Operate, Pres/Temp/Flow Compensation-Enabled, Span Compensation-Disabled, with concentration automatically corrected for temperature and pressure changes.

An application for a reference method determination for this candidate method was received by the EPA on October 17,

2008. This analyzer is commercially available from the applicant, Ecotech Pty. Ltd., 1492 Ferntree Gully Road, Knoxfield, Victoria, 3180, Australia.

The two new $PM_{10-2.5}$ reference methods are manual methods that each utilize a pair of filter samplers that have been previously designated individually as reference methods, one for $PM_{2.5}$ and the other for PM_{10}, and have been shown to meet the requirements specified in Appendix O of 40 CFR Part 50. The samplers of the first method are currently designated as reference methods RFPS–0498–117 and RFPS–1298–126 for $PM_{2.5}$ and PM_{10}, respectively. The samplers of the second method are currently designated as reference methods RFPS–0498–118 and RFPS–1298–127 for $PM_{2.5}$ and PM_{10}, respectively. These newly designated reference methods for $PM_{10-2.5}$ are identified as follows:

RFPS–0509–175, ''Thermo Scientific Partisol® Model 2000 PM10–2.5 Sampler Pair'' for the determination of coarse particulate matter as $PM_{10-2.5}$, consisting of a pair of Thermo Scientific Partisol® Model 2000 samplers, with one configured as a $PM_{2.5}$ sampler (RFPS–0498–117) and the other configured as a PM_{10c} sampler with the $PM_{2.5}$ separator replaced with a Thermo Scientific WINS Bypass Downtube (RFPS–1298–126), and operated in accordance with the associated Partisol® Model 2000 Instruction manual supplement.

RFPS–0509–176, ''Thermo Scientific Partisol®-Plus Model 2025 Sequential PM10–2.5 air sampler pair'' for the determination of coarse particulate matter as $PM_{10-2.5}$, consisting of a pair of Thermo Scientific Partisol®-Plus Model 2025 Sequential samplers, with one configured as a $PM_{2.5}$ sampler (RFPS–0498–118) and the other configured as a PM_{10c} sampler with the $PM_{2.5}$ separator replaced with a Thermo Scientific Partisol® 2025 Downtube (RFPS–1298–127), and operated in accordance with the associated Partisol®-Plus Model 2025 Sequential Instruction manual supplement.

Applications for $PM_{10-2.5}$ reference method determinations for these candidate methods were received by the EPA on April 29, 2009. The samplers are commercially available from the applicant, Thermo Fisher Scientific, Air Quality Instruments, Environmental Instruments Division, 27 Forge Parkway, Franklin, MA 02038.

The four new PM equivalent methods are two dual-channel samplers that measure both $PM_{2.5}$ and $PM_{10-2.5}$, utilizing a manual, filter method (sampler) and a measurement principle based on PM separation in a virtual impactor, with separate fine and coarse filter sample collection and gravimetric analysis. The first sampler is a single-event sampler, and the second is a sequential-filter device. These newly designated equivalent methods, for $PM_{2.5}$ and $PM_{10-2.5}$, are identified as follows:

EQPS–0509–177 ($PM_{2.5}$) and EQPS–0509–178 ($PM_{10-2.5}$), ''Thermo Scientific Partisol® 2000–D Dichotomous Air Sampler'', configured for dual-filter, single-event sampling of fine ($PM_{2.5}$) and coarse ($PM_{10-2.5}$) particles, using a virtual impactor to separate fine and coarse PM into two samples for collection on two separate filter membranes, operated for a 24-hour sample period, in accordance with the Model 2000–D Dichotomous Instruction Manual.

EQPS–0509–179 ($PM_{2.5}$) and EQPS–0509–180 ($PM_{10-2.5}$), ''Thermo Scientific Dichotomous Partisol®-Plus Model 2025–D Sequential Air Sampler'', configured for dual-filter sampling of fine ($PM_{2.5}$) and coarse ($PM_{10-2.5}$) particle components, using a virtual impactor to separate the fine and coarse PM into two samples for collection on two separate filter membranes, and operated with the modified filter shuttle mechanism implemented May 31, 2008 and firmware version 1.500, or later, for 24-hour continuous sample periods, in accordance with the Model 2025–D Sequential Dichotomous Instruction Manual.

Applications for $PM_{2.5}$ and $PM_{10-2.5}$ equivalent method determinations for these candidate samplers were received by the EPA on April 10, October 3, and October 7, 2008. The samplers are commercially available from the applicant, Thermo Fisher Scientific, Air Quality Instruments, Environmental Instruments Division, 27 Forge Parkway, Franklin, MA 02038.

A test analyzer and test samplers representative of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR Part 53 (as amended on October 17, 2006). After reviewing the results of those tests and other information submitted by the applicants in the respective applications, EPA has determined, in accordance with Part 53, that each of these methods should be designated as a reference or equivalent method, as appropriate. The information submitted by the applicants in the respective applications will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated reference or equivalent methods, these methods are acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designated method description (*see* the identifications of the methods above).

Use of each method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program'' EPA–454/B–08–003, December, 2008 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference or equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of any

of the methods should be directed to the appropriate applicant.

Linda S. Sheldon,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E9–12789 Filed 6–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8913–1]

NACEPT Subcommittee on Promoting Environmental Stewardship

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the NACEPT Subcommittee on Promoting Environmental Stewardship.

The purpose of the proposed Subcommittee on Promoting Environmental Stewardship (SPES) of the National Advisory Council for Environmental Policy and Technology (NACEPT) will be to advise the U.S. Environmental Protection Agency (EPA) on how to promote broad, organization-wide environmental stewardship practices in the regulated community and other sectors, as appropriate, in order to enhance human health and environmental protection. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/.*

DATES: The NACEPT Subcommittee on Promoting Environmental Stewardship will hold an open meeting on June 30, 2009 (9 a.m.–5 p.m.) and July 1, 2009 (9 a.m.–4:30 p.m.) Eastern.

ADDRESSES: The meeting will be held at the EPA Office of Pesticide Programs, One Potomac Yard Conference Center (1st Floor), 2777 S. Crystal Dr., Arlington, VA 22202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Regina Langton, Designated Federal Officer, *langton.regina@epa.gov,* 202–566–2178, U.S. EPA Office of Policy, Economics, and Innovation (MC1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the SPES should be sent to Jennifer Peyser at (202) 965–6215 or *jpeyser@RESOLV.org.* All requests must be received no later than June 16, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Jennifer Peyser at (202) 965–6215 or *jpeyser@RESOLV.org.* To request accommodation of a disability, please contact Jennifer Peyser at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 22, 2009.

Regina Langton,

Designated Federal Officer.

[FR Doc. E9–12794 Filed 6–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8911–9]

Notice of Nationwide Waiver of Section 1605 (Buy America Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for Projects that Solicited Bids on or after October 1, 2008 and prior to February 17, 2009 that are Financed through the Clean or Drinking Water State Revolving Funds using Assistance Provided under ARRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a nationwide waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for eligible projects that solicited bids on or after October 1, 2008, and prior to February 17, 2009, the date of enactment of ARRA, and that did so in reasonable and prudent, specific anticipation of ARRA funding, or any other source of timely funding. This action permits the use of non-domestic iron, steel, and manufactured goods in such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Attorney-Advisor, Office of Wastewater Management, (202) 564–0614, or Philip Metzger, Attorney-Advisor, Office of Ground Water and Drinking Water, (202) 564–3776, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of Public Law 111–5, Buy American requirements, for eligible projects for which a Clean or Drinking Water State Revolving Fund will conclude or has concluded an assistance agreement using ARRA funds for projects that solicited bids on or after October 1, 2008 and prior to February 17, 2009.

The basis for the nationwide waiver is the requirement in the SRF appropriations heading of ARRA Title VII for giving priority to those projects that are ready to proceed to construction within 12 months of the enactment of ARRA, as follows:

> That, notwithstanding the priority rankings they would otherwise receive under each program, priority for funds appropriated herein shall be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of this Act.

This waiver also relies on the requirement in the SRF appropriations heading that all funds must be under contract or construction within 12 months of the enactment of ARRA, as follows:

> That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) that are not under contract or construction within 12 months of the date of enactment of this Act.

As authorized by the Federal Water Pollution Control Act and the Safe Drinking Water Act, base State programs (not appropriated under ARRA) are not required to meet a deadline for having appropriated funds under contract or under construction. States are required to commit funds appropriated to projects within 1 year. Binding commitments, in the context of the SRF programs, are typically executed in the form of loan agreements. Loan agreements, however, do not carry a particular statutory deadline for assistance recipients to enter contracts or to begin construction. For appropriations under ARRA, however, States are required to ensure that all funds are under contract or construction within 1 year of enactment of ARRA.

In order to meet the special requirements authorized by ARRA, most importantly the requirement to have all funds under contract or construction within 12 months of enactment, States began the development of priority lists and intended use plans (IUP) prior to, and in anticipation of, passage of the Act. Such advance planning was considered crucial by both States and EPA. EPA actively encouraged such planning in anticipation of possible deadlines for construction. Those States that effectively planned for such an eventuality took the additional step of

encouraging potential assistance recipients to begin the planning and design phase of project construction, and in some cases, actually solicit bids on the plans and designs. Projects that have solicited bids are in most cases considered to be in a ready-to-proceed category as among projects listed on State IUPs. Under the exceptional emphasis on expeditious construction of ARRA's SRF language quoted above, States will generally give the highest priority for ARRA SRF funding to eligible projects that clearly qualify to be in a ready-to-proceed category. This statutory language also confirms the appropriateness of proactive steps States had taken to encourage SRF projects' readiness for expeditious construction. Moreover, the ARRA SRF language cited in EPA's nationwide waiver for refinanced projects specified October 1, 2008 as the opening of the window within which initiation of relevant action can properly be considered done ''in anticipation of ARRA'' (74 FR 15722).

To be included under this waiver, potential assistance recipients must show a verifiable basis on which they believed it was reasonable and prudent to solicit bids for these projects prior to concluding an assistance agreement with the State SRF. Such verification will show some objective basis under which these actions were reasonably and prudently undertaken in specific anticipation of ARRA funding, or any other source of timely funding. Such action may include an affirmative communication from a funding source, such as a binding commitment, high placement on a priority list, or other indicative and verifiable communication from an SRF or other government funding source, or regarding any affirmative steps taken to secure private bond financing from an appropriate industry entity. Any such objective verification would show that bid solicitations were undertaken reasonably and prudently, in order to fulfill Congress' intent in passing ARRA and in particular to create jobs and spur economic recovery ''by commencing activities and expenditures as expeditiously as possible'' (*See* ARRA Section 3(b)).

The imposition of ARRA's Buy American requirements on projects eligible for SRF assistance whose assistance applicants had solicited bids on or after October 1, 2008 and prior to February 17, 2009, the date when those requirements were imposed, would require the time-consuming rebidding of those projects and potentially a redesign. Specifically, those projects that can show a reasonable and prudent basis to solicit bids prior to the passage of the ARRA would be harmed by the imposition of these requirements post bid solicitation. This imposition would particularly conflict with the intentions and objectives of the bases on which those projects reasonably and prudently solicited bids for project construction prior to the passage of the ARRA: based on an affirmative communication by a State SRF program, or in order to meet requirements set forth or identified by a financing agency or source of funds in order to ensure receipt of financing for the project. This would clearly frustrate Congress' expressed intent for expeditious construction of projects supported by the State Revolving Funds or that had otherwise made themselves ready to proceed, and may imperil portions of States' ARRA funding if it renders them unable to meet ARRA's stringent time requirements for the entirety of their SRF appropriations. These projects are most likely to proceed to construction in a relatively short period of time, thereby creating jobs and stimulating the economy.

ARRA Section 1605(b)(1) authorized the Administrator to waive the requirements of Section 1605(a) in any case or category of cases in which she finds that applying subsection (a) would be inconsistent with the public interest. Therefore, for the foregoing reasons, applying Buy America requirements to projects that reasonably and prudently solicited bids prior to the passage of ARRA in specific anticipation of ARRA funding, or any other source of timely funding, would be inconsistent with the public interest.

Authority: Public Law 111–5, section 1605.

Dated: May 22, 2009.

Michael Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E9–12793 Filed 6–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8911–8]

Notice of Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for de minimis Incidental Components of Projects Financed Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for *de minimis* incidental components of eligible water infrastructure projects funded by ARRA. This action permits the use of non-domestic iron, steel, and manufactured goods when they occur in *de minimis* incidental components of such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Attorney-Advisor, Office of Wastewater Management, (202) 564–0614, or Philip Metzger, Attorney-Advisor, Office of Ground Water and Drinking Water, (202) 564–3776, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of Public Law 111–5, Buy American requirements, allowing the use of non-domestic iron, steel, and manufactured goods when they occur in *de minimis* incidental components of eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds, where such components comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Among the General Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), Section 1605(a) requires that ''all of the iron, steel, and manufactured goods used in'' a public works project built with ARRA funds must be produced in the United States, unless the head of the respective Federal department or agency determines it necessary to waive this requirement based on findings set forth in Section 1605(b). In addition, expeditious construction of SRF projects is made a high priority by a provision in the ARRA Title VII appropriations heading for the SRFs, which states ''[t]hat the Administrator shall reallocate funds * * * where projects are not under contract or construction within 12 months of'' ARRA enactment (February 17, 2010). The finding relevant to this waiver is that ''applying [ARRA's Buy American requirement] would be inconsistent with the public interest'' (1605(b)(1)).

In implementing ARRA section 1605, EPA must ensure that the section's requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions of ARRA applicable to projects funded under the Clean and Drinking Water State Revolving Funds (SRF), particularly considering the SRFs' 12 month ''contract or construction'' requirement.

Further, also in the context of ARRA's SRF ''contract or construction'' deadline, Congress' overarching directive to

> [t]he President and the heads of Federal departments and agencies [is that they] shall manage and expend the funds made available in this Act so as to achieve the purposes [of this Act], including commencing expenditures and activities as quickly as possible consistent with prudent management. [ARRA Section 3(b)]

Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel, and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation and control equipment, treatment process equipment, and relevant materials to build structures for such facilities as treatment plants, pumping stations, pipe networks, etc. In bid solicitations for a project, these high-cost components are generally clearly described via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the approximate cost, and the country of manufacture of available components.

Every water infrastructure project also involves the use of literally thousands of miscellaneous, generally low-cost components that are essential for but incidental to the construction, and are incorporated into the physical structure of the project, such as nuts, bolts, other fasteners, tubing, gaskets, etc. These incidental components are subject to the Buy American requirement of ARRA Section 1605(a), as stated above.

In contrast with the situation applicable to major components with regard to country of manufacture, availability, and procurement process, the situation applicable to these incidental components is one where the country of manufacture and the availability of alternatives are not readily or reasonably identifiable prior to procurement in the normal course of business. Particular under the time constraints outlined above, it would be laborious, likely unproductive as to feasible alternatives, and disproportionate to the costs and time involved for an owner or their contractor to pursue such inquiries.

EPA undertook multiple inquiries to identify the approximate scope of these *de minimis* incidental components within water infrastructure projects. EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and a contractor performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings. The contractor asked the following questions:

—What percentage of total project costs were consumables or incidental costs?
—What percentage of materials costs were consumables or incidental costs?
—Did these percentages vary by type of project (drinking water vs. wastewater; treatment plant vs. pipe)?

The responses were consistent across the variety of settings and project types, and indicated that the percentage of total costs for drinking water or wastewater infrastructure projects comprised by these incidental components is generally not in excess of 5 percent of the total cost of the materials used in and incorporated into a project. In drafting this waiver, EPA has considered the *de minimis* proportion of project costs generally represented by each individual type of these incidental components within the hundreds or thousands of types of such components comprising those percentages, the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if EPA did not issue this waiver.

Under such specific circumstances associated with these particular types of incidental components, EPA has found that it would be inconsistent with the public interest—and particularly with ARRA's directives to ensure expeditious SRF construction consistent with prudent management, as cited above—to require that the national origins of these components be identified in compliance with Section 1605(a). Accordingly, EPA is hereby issuing a national waiver from the requirements of ARRA Section 1605(a) for the incidental components described above as a *de minimis* factor in the project, where such components comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver, must retain relevant documentation as to those items in their project files, and must summarize in reports to the State the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

Therefore, for the foregoing reasons, imposing ARRA's Buy American requirements for the category of *de minimis* incidental components described herein is not in the public interest. This supplementary information constitutes the ''detailed written justification'' required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Pub. L. 111–5, section 1605.

Dated: May 22, 2009.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E9–12792 Filed 6–1–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 26, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by August 3, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at *Judith-B.Herman@fcc.gov* or call her at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0817.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4 respondents; 12 responses.

Estimated Time per Response: 2–50 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for these information collections are contained in 47 U.S.C. Sections 151, 152, 154, 161 and 208 of the Communications Act of 1934, as amended.

Total Annual Burden: 216 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. However, applicants may request confidentiality and request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them. The Commission is requesting an extension (no change in the reporting and/or third party disclosure requirements) of this information collection. The Commission is reporting a minor adjustment to the estimated number of responses. There is no change to the estimated annual burden hours or the number of respondents. Bell Operating Companies (BOCs) are required to post their Comparably Efficient Interconnection (CEI) plans and amendments on their publicly accessible Internet sites. The requirement extends to all CEI plans for new or modified telemessaging or alarm monitoring services and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection.

The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–12844 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–1115]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Ms. Cynthia K. Ayer from the schools and libraries universal service support mechanism (or ''E–Rate Program'') for a period of three years. The Bureau takes this action to protect the E–Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Ms. Cynthia K. Ayer receives the debarment letter or June 2, 2009, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Ms. Cynthia K. Ayer from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 09–1115, which was mailed to Ms. Cynthia K. Ayer and released on May 21, 2009. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Irene Flannery,

Assistant Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

May 21, 2009

Via Certified Mail Return Receipt Requested and Facsimile (803) 252–8290

Ms. Cynthia K. Ayer, c/o James Edward Holler, Holler Dennis Corbett

Ormond Plante and Garner, P.O. Box 11006, Columbia, SC 29211.

Re: Notice of Debarment, File No. EB–09–IH–0002

Dear Ms. Ayer: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E–Rate program'') for a period of three years.[1]

On February 26, 2009, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on March 19, 2009.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to mail fraud in connection with your participation in the E-Rate program.[6] You admitted to, among other things, submitting applications containing false information to the E-Rate program and subsequently receiving funds to which you were not entitled.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.*, the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.'' [10]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail).
Beth Drake, Assistant United States Attorney, United States Department of Justice (via e-mail).

February 26, 2009

DA 09–476

Via Certified Mail

Return Receipt Requested and E-Mail

Ms. Cynthia K. Ayer, c/o James Edward Holler, Holler Dennis Corbett Ormond Plante and Garner, P.O. Box 11006, Columbia, SC 29211.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0002

Dear Ms. Ayer: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of mail fraud, in violation of 18 U.S.C. 2 and 1341, in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[11] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[13] On April 30, 2008, you pled guilty to mail fraud in connection with your participation in the E-Rate program.[14] While employed as a technology director for Bamberg County School District One in Bamberg, South Carolina, you admitted to submitting applications containing false information to the E-Rate program.[15] You subsequently requested funds that you were not entitled to and caused the Universal Service Administrative Company (''USAC'') to send you a check in the amount of $25,243 made payable to your company, Go Between Communications a/k/a Go Between Telecommunications.[16] As a result of your conviction, you have been sentenced to serve two years in prison and ordered to pay $468,496 in restitution to USAC for using the mail to submit fraudulent applications for E-Rate funding on behalf of Bamberg County School District One.[17]

Pursuant to section 54.8(a)(4) of the Commission's rules,[18] your conviction requires the Bureau to suspend you

[1] *See* 47 CFR 0.111(a), 54.8.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Ms. Cynthia K. Ayer, Notice of Suspension and Initiation of Debarment Proceedings, 24 FCC Rcd 2470 (Inv. & Hearings Div., Enf. Bur. 2009) (Attachment 1).

[3] 74 Fed. Reg. 11726–01 (Mar. 19, 2009).

[4] *See* Notice of Suspension, 24 FCC Rcd at 2470–71.

[5] *See* 47 CFR 54.8(e)(3) and (4). That date occurred no later than April 20, 2009. *See supra* note 3.

[6] *See* Notice of Suspension, 24 FCC Rcd at 2470.

[7] *See id.*

[8] 47 CFR 54.8(c).

[9] *See* 47 CFR 54.8(g) *See also* Notice of Suspension, 24 FCC Rcd at 2471.

[10] *See* 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 24 FCC Rcd at 2470.

[11] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction of one count of mail fraud. *United States* v. *Cynthia K. Ayer*, Criminal Docket No. 5:06–453 (001 MBS), Plea Agreement (D. S.C. filed and entered Apr. 30, 2008) (''*Ayer Plea Agreement''*); *United States* v. *Cynthia K. Ayer*, 5:06–453 (001 MBS), Judgment (D. S.C. filed and entered Dec. 11, 2008) (''*Ayer Judgment''*). *See also United States* v. *Cynthia K. Ayer*, Criminal Docket No. 5:06–453 (001 MBS), Indictment (D. S.C. filed Apr. 19, 2006 and entered Apr. 20, 2006) (''*Ayer Indictment''*).

[12] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order''*) (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[13] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[14] *See Ayer Plea Agreement. See also* Department of Justice Press Release (Dec. 11, 2008), *available at http://www.usdoj.gov/atr/public/press_releases/2008/240283.pdf (DOJ Press Release).*

[15] *DOJ Press Release* at 1.

[16] *See Ayer Indictment* at 13–15; *DOJ Press Release* at 1.

[17] *Ayer Judgment* at 2–4; *DOJ Press Release* at 1.

[18] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–27, ¶¶ 67–74.

from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[19] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[20]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[21] Such requests, however, will not ordinarily be granted.[22] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[23] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[24]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[25] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[26] Absent extraordinary circumstances, the Bureau will debar you.[27] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[28] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[29]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[30] The Bureau may, if necessary to protect the public interest, extend the debarment period.[31]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov.*

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov.*

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Beth Drake, Assistant United States Attorney (via e-mail).
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail).

[FR Doc. E9–12820 Filed 6–1–09; 8:45 am]

BILLING CODE 6712–01–P

[19] 47 CFR 54.8(a)(1)(d).

[20] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[21] 47 CFR 54.8(e)(4).

[22] *Id.*

[23] 47 CFR 54.8(e)(5).

[24] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), (f).

[25] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

[26] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[27] *Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[28] *See id.,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

[29] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[30] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d),(g).

[31] 47 CFR 54.8(g).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0151)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The FDIC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On March 27, 2009, the FDIC solicited public comment for a 60-day period on renewal of the following existing collection of information: Notice Regarding Assessment Credits, OMB Control No. 3064–0151. No comments were received. Therefore, the FDIC hereby gives notice of its submission of the information collection to OMB for review.

DATES: Comments must be submitted on or before July 2, 2009.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, F–1064, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Notice Regarding Assessment Credits.

OMB Number: 3064–0151.

Frequency of Response: On occasion.

Affected Public: FDIC-insured institutions.

Estimated Number of Respondents: 15.

Estimated Time per Response: 2 hours.

Total Annual Burden: 30 hours.

General Description of Collection: FDIC-insured institutions must notify the FDIC if deposit insurance assessment credits are transferred, e.g., through a sale of the credits or through a merger, in order to obtain recognition of the transfer.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 27th day of May, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12692 Filed 6–1–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 17, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. H. J. Merritt and Ruth D. Merritt, both of Colquitt, Georgia; to retain voting shares of PeoplesSouth BancShares, Inc., and thereby indirectly retain voting shares of PeoplesSouth Bank, both of Colquitt, Georgia.

Board of Governors of the Federal Reserve System, May 28, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12761 Filed 6–1–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 2009.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. BankCap Partners Fund I, L.P.; BankCap Partners GP, LP; BankCap Equity Fund, LLC; and BCP Fund I Virginia Holdings, LLC, all of Dallas, Texas; to acquire 100 percent of the voting shares of First Bankshares, Inc., and thereby indirectly acquire voting shares of SuffolkFirst Bank, both of Suffolk, Virginia.

In connection with this application, BCP Fund I Virginia Holdings, LLC, Dallas, Texas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First Bankshares, Inc., and thereby indirectly aquire voting shares of SuffolkFirst Bank, both of Suffolk, Virginia.

2. Paint Rock Bancshares, Inc., Paint Rock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Paint Rock, Texas.

Board of Governors of the Federal Reserve System, May 28, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12760 Filed 6–1–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, June 8, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 29, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12940 Filed 5–29–09; 4:15 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Performance Measurement On-line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-line Tool was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs:

Abandoned Infants Assistance Program, Infant Adoption Awareness Training Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on a semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the Program Assessment Rating Tool (PART), an OMB-mandated reporting system that focuses on quantifiable outcome measures, directly related to the expected social impact or public benefit of each federal program. The Children's Bureau will use the aggregated data collected under each federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: All competitive discretionary grant programs funded by the Children's Bureau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-line Tool/Abandoned Infants Assistance Program	36	2	1	72
Performance Measurement On-line Tool/Infant Adoption Awareness Program	6	2	1	12
Performance Measurement On-Line/Adoption Opportunities Program	55	2	1	110
Performance Measurement Online Tool/Child Abuse and Neglect Program	32	2	1	64
Performance Measurement On Line Tool/Child Welfare Training Program	55	2	1	110

Estimated Total Annual Burden Hours: 368

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 27, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–12670 Filed 6–1–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-09–0920–09BQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for

opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Examining In-vehicle Exposures to Air Pollutants and Corresponding Health Outcomes of Commuters—New—National Center for Environmental Health, (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

Numerous studies have found associations between ambient fine particulate matter ($PM_{2.5}$) and adverse cardiovascular outcomes. Several recent epidemiologic studies suggest that vehicle-related emissions, in particular, may be linked to many of the these adverse effects and that specific sub-populations may be more susceptible to health risks due to their enhanced exposures to vehicle-related $PM_{2.5}$ sources. Commuters are a potentially susceptible, yet poorly characterized, sub-population. Importantly, recent epidemiologic studies indicate that specific sub-groups, including those with asthma, may be at risk to cardiorespiratory health effects due to their pre-existing health condition. A more complete understanding of in-vehicle exposures for the commuter population, especially those with asthma, is therefore becoming increasingly necessary as commuting durations and roadway congestion have steadily increased throughout the U.S. during the last 20 years. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) will conduct this study to characterize in-vehicle exposures to traffic-related air pollutants among commuters, with and without asthma, and any health impacts that these exposures may have on the commuter.

A total of 40 participants (20 adults with physician-diagnosed asthma and 20 healthy adults) living in the Atlanta metro area will be recruited for participation in this study. Participants will be excluded if they meet specific criteria including: ever being diagnosed with severe asthma, ever suffering a myocardial infarction, smoking tobacco products, or ever being diagnosed with a pulmonary disease such as emphysema, COPD, or any type of lung cancer.

Approximately one week prior to their scheduled commute, participants will complete a one-time baseline questionnaire to assess medical history and general exposures. Additionally, a short symptom diary recording any respiratory symptoms will be completed by the participant each day for the seven days prior to the commute and on the day of the commute. On the day of the planned commute, health measurements for lung function, lung inflammatory markers, heart rate, and biomarkers of systemic inflammation will also be conducted by a trained field technician. In-vehicle exposures to particulate matter and other air pollutants will then be measured for all participants during their commute. After the commute, the symptom diary and health measurements will be conducted again to assess any potential changes in respiratory and cardiovascular health effects. The information learned from the health measurements and diary entries before and after the commute will be important in better understanding the potential acute health impacts associated with exposures to in-vehicle traffic pollutants and respiratory and cardiovascular health, and whether urban commuters—especially those with asthma—should be viewed as a susceptible sub-population given their enhanced exposures to $PM_{2.5}$ and gas-phased pollutants.

There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument type	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Baseline questionnaire	Eligible participants with and without asthma.	40	1	30/60	20
Symptom diary	Eligible participants with and without asthma.	40	8	5/60	27
Total					47

Dated: May 26, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12746 Filed 6–1–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0221]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

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 regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by August 3, 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.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331)—Extension

Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6). Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes the following items: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Respondents to this collection of information include manufacturers, packers, or distributors of dietary supplements that bear section 403(r)(6) of the act statements on their labels or labeling.

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
101.93	2,200	1	2,200	0.75	1,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) statements on labels or in labeling of dietary supplements. The agency is requesting only information that is immediately available to the

manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. FDA estimates that, each year, approximately 2,200 firms will submit the information required by section 403 of the act. We estimate that a firm will require 0.75 hours to gather the information needed and prepare a communication to FDA, for a total of 1,650 hours (2,200 x 0.75). This estimate is based on the average number of notification submissions received by the agency in the preceding 2 years.

Dated: May 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12797 Filed 6–1–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0232]

Agency Information Collection Activities; Proposed Collection; Comment Request; Interstate Shellfish Dealers Certificate

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 Interstate Shellfish Dealers Certificate.

DATES: Submit written or electronic comments on the collection of information by August 3, 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.

Interstate Shellfish Dealers Certificate (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, ''Interstate Shellfish Dealer's Certificate.'' FDA uses this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Submission of Interstate Shellfish Dealer's Certificate	3,038	40	57	2,280	0.10	228

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that 40 respondents will submit 2,280 Interstate Shellfish Dealer's Certificates annually, for a total burden of 228 hours (2,280 submissions x 0.10 hours = 228 hours). This estimate is based on FDA's experience and the number of certificates received in the past 3 years.

Dated: May 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12796 Filed 6–1–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0671]

Cooperative Agreement to Support the Illinois Institute of Technology's National Center for Food Safety and Technology (U01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application for the award of a cooperative agreement in fiscal year 2009 (FY09) to the Illinois Institute of Technology (IIT) to support the National Center for Food Safety and Technology (NCFST). The estimated amount of support in FY09 will be for up to $7 million (direct plus indirect costs), with the possibility of 4 additional years of support for up to $28 million, subject to the availability of funds. This award will improve public health by continued support of an applied research, education, and outreach program related to the safety of food processing technologies and processed foods.

DATES: The application due date is June 28, 2009. The anticipated start date is September 2009. The opening date was May 28, 2009.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT: For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.cfsan.fda.gov/list.html.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Request for Application Number: RFA–FD–09–004

Catalog of Federal Domestic Assistance: 93.103

A. Background

FDA has supported the NCFST under five previously awarded cooperative agreements (53 FR 15736; 56 FR 46189; 59 FR 24703; 64 FR 39512; and 69 FR 25405). NCFST was established by IIT to bring together the food safety and technology expertise of academia, industry and FDA for the purpose of enhancing the safety of the food supply in the common goal of enhancing and improving the safety of the food for U.S. consumers. NCFST is structured so that representatives of participating organizations play a role in establishing policy and administrative procedures as well as identifying long- and short-term research needs. With this organizational structure, NCFST is able to build cooperative food safety programs on a foundation of knowledge about current industrial trends in food processing and packaging technologies, regulatory perspectives from public health organizations, and fundamental scientific expertise from academia.

B. Research Objectives

The FDA recognizes that food production and processing technology is rapidly changing, that globalization of the food supply is increasing, and that the number and nature of the hazards associated with foods are rapidly evolving. FDA intends to maintain and facilitate the further development of NCFST for the purpose of enhancing food safety to benefit the public. NCFST is uniquely positioned as a key component of FDA's food protection program. Specifically, through the center's science platforms, the research at NCFST focuses on the development and validation of food processing and packaging technologies for safety and quality; investigation and development of preventive technologies targeted to reduce or eliminate harmful chemical and microbial contamination of foods; and the effects of processing on the stability and safety of bioactive ingredients added to or naturally occurring in foods. Additionally, the development of an integrated collaborative food protection research/education/outreach program will provide fundamental food safety information, in the public domain, for use by all segments of the food science community in product and process development, regulatory activities, academic programs and consumer programs.

C. Eligibility Information

Competition is limited to the IIT. FDA believes that continued support of NCFST at IIT is appropriate because IIT is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. IIT's Moffet Center, where NCFST is located, is a unique research facility which includes an industrial-size pilot plant and smaller pilot plants for food processing and packaging equipment, a pathogen containment pilot plant, a packaging laboratory, analytical laboratories, offices, containment facilities, classrooms, and support facilities which permit research from bench-top to industrial-scale. The industrial-size pilot plant is built to accommodate routine food processing and packaging research in a commercial atmosphere. The physical layout of the facility provides maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. Additionally, NCFST has a BL3 pilot plant and laboratory as well as a select agent laboratory to conduct studies with *C. botulinum* and other selected agents. NCFST researchers have access to nutritional clinical facilities on the IIT campus for validating in humans how processing may impact the availability of bioactive ingredients added to or naturally occurring in foods.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of funds available for support in FY 2009 will be for up to $7 million (direct plus indirect costs), with the possibility of 4 additional years of support for up to $28 million, subject to the availability of funds. Future year amounts will depend on annual appropriations and successful performance.

This award will be funded based on the quality (e.g., how well the grantee responds to the RFA (request for application) requirements) of the application received and is subject to availability of Federal funds to support the project. In addition, if a cooperative agreement is awarded, the grantee will be informed of any additional documentation that should be submitted to FDA. This cooperative agreement program requires that the applicant substantially share in the project costs if an award is made.

FDA grants policies as described in the DHHS (Department of Health and Human Services) Policy Statement, *http://www.hhs.gov/grantsnet/adminis/gpd/index.htm*, will apply to the applications submitted and awards made in response to this FOA.

B. Length of Support

The award will provide 1 year of support and include future recommended support for 4 additional years, contingent upon satisfactory performance in the achievement of project and program reporting objectives during the preceding year and the availability of Federal fiscal year appropriations.

III. How to Submit a Paper Application

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.cfsan.fda.gov/list.html*. Persons interested in applying for a grant may obtain an a copy of the PHS 398 application at *http://grants.nih.gov/grants/forms.html*

For paper submissions, the following steps are required:

- Step 1: Obtain a DUNS Number
- Step 2: Register with Central Contractor Registration (CCR)

Information on the process necessary to obtain DUNS and register in CCR can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*.

Submit one (1) original signed copy of the application to: Gladys M. Bohler, Food and Drug Administration, Division of Acquisition Support and Grants, 5630 Fishers Lane, rm. 2105 (HFA–500), Rockville, MD 20857, 301–827–7168, FAX: 301–827–7101, email: *gladys.melendez-bohler@fda.hhs.gov.*

Submit five (5) copies of the paper application to: Donald L. Zink, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–006), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2290, email: *donald.zink@fda.hhs.gov.*

Dated: May 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12798 Filed 6–1–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–160]

Prevention Through Design (PtD) Plan for the National Initiative

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft document available for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft technical report entitled ''Prevention through Design Plan for the National Initiative'' now available for public comment. The document and instructions for submitting comments can be found at *http://wwwdev.niosh.cdc.gov/niosh/review/public/160/.*

DATES: Comments must be submitted by August 21, 2009.

ADDRESEES: Written comments may be submitted to the NIOSH Docket Office, MS–C34, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8611. All materials submitted to NIOSH should reference docket number NIOSH–160 and must be submitted by August 21, 2009 to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. In addition comments may be sent via e-mail to *nioshdocket@cdc.gov* or by facsimile to (513) 533–8285. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the electronic docket, including any personal information.

Background: The National Institute for Occupational Safety and Health (NIOSH) currently leads a nationwide initiative called Prevention through Design (PtD). PtD addresses occupational safety and health needs by eliminating hazards and minimizing risks to workers throughout the life cycle of work premises, tools, equipment, machinery, substances, and work processes including their construction, manufacture, use, maintenance, and ultimate disposal or re-use. The strategic plan outlined in this technical report establishes goals for the successful implementation of the PtD Plan for the National Initiative. This comprehensive approach, which includes worker health and safety in all aspects of design, redesign and retrofit, will provide a vital framework for saving lives and preventing work-related injuries and illnesses.

This guidance document does not have the force and effect of law.

FOR FURTHER INFORMATION CONTACT: Donna S. Heidel, CIH, NIOSH, E-mail *dheidel@cdc.gov,* telephone (513) 533–8489, facsimile (513) 533–8230.

Reference: The Prevention through Design Program Portfolio Web address for this document: *http://wwwdev.niosh.cdc.gov/niosh/programs/PtDesign/.*

Dated: May 26, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention.

[FR Doc. E9–12747 Filed 6–1–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Policy Directorate/Office of Strategic Plans; Quadrennial Homeland Security Report

AGENCY: Policy Directorate/Office of Strategic Plans, DHS.

ACTION: 30-Day Notice and request for comments; Emergency Submission to the Office of Management and Budget (OMB).

SUMMARY: The Department of Homeland Security, Policy Directorate/Office of Strategic Plans, submits this for the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Policy Directorate/Office of Strategic Plans is soliciting comments concerning the Quadrennial Homeland Security Report. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until July 2, 2009. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

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, 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 submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: the Department of Homeland Security (DHS), Policy Directorate/ Office of Strategic Plans, Michael Galang, (202) 282–9118.

SUPPLEMENTARY INFORMATION: The Implementing Recommendations of the 9/11 Commission Act of 2007 mandated the QHSR and included the following consultation requirement: ''The Secretary shall conduct each quadrennial homeland security review under this subsection in consultation with—(A) The heads of other Federal agencies, including the Attorney General, the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of the Treasury, the Secretary of Agriculture, and the Director of National Intelligence; (B) key officials of the Department; and (C) other relevant governmental and nongovernmental entities, including State, local, and tribal government officials, members of Congress, private sector representatives, academics, and other policy experts.''

The homeland security community is so vast that physically convening representative and inclusive study groups that are also able to work efficiently and effectively is virtually impossible. Therefore, DHS will fulfill QHSR consultation requirements through a number of mechanisms, including collaborative web-based engagement tools. In doing so, DHS intends to create a true national dialogue on homeland security. A national dialogue platform will be created and hosted to engage homeland security stakeholders around the compelling questions, ideas, or concepts that emerge through the QHSR process. The dialogue platform is based on the principle of radical scalability: The more feedback that is received, the more clearly sorted participants' preferences and priorities become. In a national dialogue, users can submit their best ideas, refine them in open discussion, and use simple rating and tagging features to identify the most popular ideas and important overarching themes. The platform can host multiple simultaneous dialogues, and dynamically pose new questions, so that DHS can repeatedly ''pulse'' participants over a three-month timeframe.

Ideas, comments, or position papers will also be solicited at the outset of the review and accepted via electronic means. All submitted position papers will inform the QHSR Study Groups as they initiate their analyses. All homeland security stakeholders are eligible and are invited to provide input. A letter from Secretary Napolitano will be sent to each stakeholder association inviting their input.

Analysis

Agency: Department of Homeland Security, Policy Directorate/Office of Strategic Plans.

Title: Quadrennial Homeland Security Report.

OMB Number: 1601–NEW.

Frequency: On occasion.

Affected Public: Federal Government, State, Local or Tribal Government.

Number of Respondents: 50,000 respondents.

Estimated Time per Respondent: 8 hours per respondent.

Total Burden Hours: 400,000 annual burden hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintaining): None.

Dated: May 14, 2009.

Margaret H. Graves,

Acting Chief Information Officer.

[FR Doc. E9–12681 Filed 6–1–09; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection. Comment Request

ACTION: 60-day notice of information collection under review: Application Requirements for the Adjustment of Status under Section 586 of Public Law 106–249; OMB–27, OMB Control No. 1615–0081.

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 August 3, 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 Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0081 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 agency's 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 Requirements for the Adjustment of Status under Section 586 of Public Law 106–249.

(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–27, 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 data is used by the USCIS to determine an applicant's eligibility for adjustment of status under section 586 of Public Law 106–249.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,500 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12768 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–470; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form N–470, Application to Preserve Residence for Naturalization; Form N–470. OMB Control No. 1615–0056.

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 August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form N–470. Should USCIS decide to revise the Form N–470 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–470.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail please make sure to add OMB Control Number 1615–0056 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 agency's 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 currently approved information collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470. 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 information furnished on this form will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 219 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12772 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–508 and Form I–508F, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–508 and I–508F, Waiver of Rights, Privileges, Exemptions and Immunities; OMB Control No. 1615–0025.

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 August 3, 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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail please add the OMB Control Number 1615–0025 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the 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 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:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–508 and Form I–508F 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 is used by the USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Form* I–508, 1,800 responses at 5 minutes (.083) per response, and Form I–508F, 200 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12780 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: E-Verify Non-User Survey and Employee-Employer Survey in Arizona; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: E-Verify Non-User Survey and Employee-Employer Survey in Arizona. OMB Control No. 1615–0108.

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 August 3, 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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail, please add the OMB Control Number 1615–0108 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 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* E-Verify Non-User Survey and Employee-Employer Survey in Arizona.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. 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 data collected on these surveys will be used to evaluate the E-Verify Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Web survey of non-users 2,250 respondents × .333 (20 minutes) per response. Arizona interview with employers 100 respondents × 2 hours per response. Arizona interview with employees 450 respondents × 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,399 annual burden hours.

If you need a copy of the proposed information collection instrument, or need additional information, please visit: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, (202) 272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12776 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–363, Extension of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form I–363, Request To Enforce Affidavit of Financial Support and Intent To Petition for Custody for Public Law 97–359 Amerasian; OMB Control Number 1615–0022.

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 60 days until August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form I–363. Should USCIS decide to revise the Form I–363, 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 I–363.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail, please add the OMB Control Number 1615–0022 in the subject box.

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 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 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:* Request To Enforce Affidavit of Financial Support and Intent To Petition for Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–363. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. This information collection is used to ensure the financial support of an Amerasian child of a U.S. citizen. Without the use of this information collection, the USCIS is not able to ensure the child does not become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12781 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–1054, Extension of an Existing Information Collection; Comment Request

ACTION: 60–Day Notice of Information Collection under Review: Form G–1054, Request for Fee Waiver Denial Letter; OMB Control No. 1615–0089.

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 August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form G–1054. Should USCIS decide to revise the Form G–1054 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 G–1054.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0089 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 agency's 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:* Request for Fee Waiver Denial Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1054; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The regulations at 8 CFR 103.7(c) allow U.S. Citizenship and Immigration Services (USCIS) to waive fees for benefits under the Immigration and Nationality Act (Act). This form is used to maintain consistency in the adjudication of fee waiver requests.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1.25 hours (75 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12763 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–884, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review: Form G–884, request for the return of original document(s); OMB Control No. 1615–0100.

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 August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form G–884. Should USCIS decide to revise the Form G–884 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 G–884.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail please make sure to add OMB Control Number 1615–0100 in the subject box.

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 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Document(s).

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form G–884. 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 information provided will be used by USCIS to determine whether a person is eligible to obtain original document(s) contained in an alien file.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,500 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12762 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–243, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–243, Application for Removal; OMB Control No. 1615–0019.

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 August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form I–243. Should USCIS decide to revise the Form I–243 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 I–243.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail please make sure to add OMB Control Number 1615–0019 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 agency's 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 for Removal.

(3) *Agency form number, if any, and the applicable Department of Homeland Security component sponsoring the collection:* Form I–243. 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 and households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12759 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; Form G–146, Nonimmigrant Checkout Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 August 3, 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), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until August 3, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed 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 agency's 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:* Renewal of information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–146, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households, Business or other non-profit. The information collected on the Form G–146 is necessary for U.S. Immigration and Customs Enforcement (ICE) to determine if an individual or business is exempt from the Electronic Funds Transfer requirements of the Debt Collection Improvement Act by meeting certain conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''ICE Form G–146'' in the subject line.

Dated: May 27, 2009.

Mary Ann Plumb,

Chief of Staff, Office of Asset Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–12809 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Notice of New Information Collection

ACTION: Correction to Notice of Information Collection Under Review; Form 70–005, ICE Secure Communities Stakeholder ID Assessment Questionnaire.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 14, 2009 Vol. 74 No. 70 17205. This document contains corrections to certain portions of those notices that were published erroneously.

Correction

- In the *Title* section, the form number is corrected as follows: Form 70–008.
- In the *Action* section, the form number corrected as follows: Form 70–008.
- In the *Overview of This Information Collection* section, Item 3 is corrected as follows: *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 70–008, U.S. Immigration and Customs Enforcement.

Dated: May 27, 2009.

Mary Ann Plumb,

Chief of Staff, Office of Asset Management, United States Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–12808 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request.

ACTION: 60-day notice of new information collection; Form 10–002, Electronic Funds Transfer Waiver Request

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 August 3, 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), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until August 3, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed 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 agency's 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:* New information collection.

(2) *Title of the Form/Collection:* Electronic Funds Transfer Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 10–002, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information collected on the Form 10–002 is necessary for U.S. Immigration and Customs Enforcement (ICE) to determine if an individual or business is exempt from the Electronic Funds Transfer requirements of the Debt Collection Improvement Act by meeting certain conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''ICE Form I–515 A'' in the subject line.

Dated: May 27, 2009.

Lee Shirkey,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–12807 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Renewal of Information Collection; Comment Request.

ACTION: 60-Day Notice of Renewal Information Collection; Form I–43, Baggage and Personal Effects of Detained Alien OMB No. 1653–0023.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 August 3, 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), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until August 3, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed 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 agency's 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:* Renewal of information collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects of Detained Alien.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–43, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information collected on the Form I–43 is necessary for U.S. Immigration and Customs Enforcement (ICE) to determine if an individual or business is exempt from the Electronic Funds Transfer requirements of the Debt Collection Improvement Act by meeting certain conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 1 minute (.0167 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,020 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''ICE Form I–43'' in the subject line.

Dated: May 27, 2009.

Mary Ann Plumb,

Chief of Staff, Office of Asset Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–12805 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection Under Review. Application for Stay of Deportation or Removal, Form I–246, OMB No. 1653–0021.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 August 3, 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), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until August 3, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed 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 agency's 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:* Renewal of information collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–246, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households, Business or other non-profit. The information collected on the Form I–246 is necessary for U.S. Immigration and Customs Enforcement (ICE) to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''ICE Form I–246'' in the subject line.

Dated: May 27, 2009.

Mary Ann Plumb,

Chief of Staff, Office of Asset Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–12804 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–336, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60–Day notice of information collection under review: Form N–336, Application Request for Hearing on a Decision in Naturalization Proceedings Under Section 336; OMB Control No. 1615–0050.

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 August 3, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form N–336. Should USCIS decide to revise the Form N–336 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–336.

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 Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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 e-mail please make sure to add OMB Control Number 1615–0050 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 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–366. 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 and households. This form provides a method for applicants, whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,669 responses at 2 hours and 45 minutes (2.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21,090 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12766 Filed 6–1–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0022]

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG–0654/FEMA–REP–1/Rev.1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the dates, times, and locations of a series of public meetings that will be held, in conjunction with the Nuclear Regulatory Commission (NRC), to discuss several proposed policies and a NRC proposed rulemaking regarding onsite and offsite nuclear power plant preparedness.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations and addresses.

You may submit comments on the proposed Supplement 4 and proposed REPP Manual, identified by Docket ID FEMA–2008–0022, by one of the following methods:

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

E-mail: FEMA–POLICY@dhs.gov. Include ''Docket ID FEMA–2008–0022'' in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* and search for Docket ID ''FEMA–2008–0022''. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

Privacy Act: 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, both statements made at the public meetings as well as written comments submitted are 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.*

Teleconferencing: Interested members of the public unable to attend the meeting may participate by telephone via a toll-free teleconference. For details, please call the contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section. Those interested in participating in this meeting by teleconference should call or e-mail the person listed below in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 3 business days before each meeting date.

Webconferencing: Interested members of the public unable to attend the meeting may participate remotely on the internet. For details, please call the contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section. Those interested in participating in this meeting by webconference should call or e-mail the person listed below in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 3 business days before each meeting date.

FOR FURTHER INFORMATION CONTACT: Michelle Ralston, Emergency Management Specialist, Radiological Emergency Preparedness Branch, Technological Hazards Division, National Preparedness Directorate, Federal Emergency Management Agency; E-mail: *michelle.ralston@dhs.gov;* Phone: 202–212–2310.

SUPPLEMENTARY INFORMATION: These meetings will be conducted jointly by the Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA), and will address four separate documents that have been proposed by these two agencies to address emergency planning and preparedness for nuclear power plants. These documents address both onsite (the plants themselves) and offsite (State, local, and emergency responder) planning and preparedness. The NRC will be soliciting comments on its notice of proposed rulemaking entitled ''Enhancements to Emergency Preparedness Regulations'' (published at 74 FR 23254 on May 18, 2009) and ''Interim Staff Guidance: Emergency Planning for Nuclear Power Plants'' (a notice of availability was published at 74 FR 23221 on May 18, 2009). Both of these documents are available at *http://www.regulations.gov/search/index.jsp* (Docket ID NRC–2008–0122).

FEMA will be taking comments on the joint NRC/FEMA policy document entitled ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG–0654/FEMA–REP–1/Rev. 1 Supplement 4 (Supplement 4), and the ''FEMA Radiological Emergency Preparedness Program Manual'' (REPP Manual). On May 18, 2009, at 74 FR 23198, FEMA published a **Federal Register** Notice informing the public that FEMA is accepting comments on these documents. The documents are available online at *http://www.regulations.gov/search/index.jsp* (Docket ID FEMA–2008–0022).

NUREG–0654 is a joint NRC/FEMA policy document that contains the Evaluation Criteria that FEMA and the NRC use to determine compliance with the 16 Planning Standards that are located in FEMA's regulations at 44 CFR 350.5, and the NRC's regulations at 10 CFR part 50. The agencies use these Planning Standards, and associated Evaluation Criteria, to measure the adequacy of emergency preparedness plans of nuclear power plant owners and operators and the State, local, and Tribal jurisdictions in which they are sited.

Supplement 4 revises and provides additional offsite planning guidance for emergency preparedness programs at the Nation's nuclear power plants, including the establishment of backup means for alert and notification, and increased coordination between licensees and offsite responders. The REPP Manual provides additional guidance directed to State, local, and Tribal jurisdictions. The REPP Manual consolidates all of the FEMA Radiological Emergency Preparedness (REP) Program's many operative guidance and policy documents into one location, and provides additional guidance on the proposed changes in Supplement 4. The substance of FEMA's proposed policies aligns with changes proposed in both the NRC Notice of Proposed Rulemaking and Interim Staff Guidance.

The purpose of these public meetings is to (1) jointly introduce the proposed regulations and draft guidance related to enhancing emergency preparedness (EP) regulations, and introduce NRC and FEMA draft guidance documents jointly and to explain the alignment of these documents; (2) answer questions about the proposed rule and draft guidance documents and to describe the next steps in the rulemaking and guidance document processes; (3) ensure openness during the EP rulemaking and guidance document processes; (4) provide additional opportunities for public participation in the EP rulemaking and guidance document processes; and, (5) build positive relations, confidence, and trust in the rulemaking and guidance document processes.

Public Meeting Dates, Locations, and Times

1. Tuesday, June 2, 2009; King of Prussia, Pennsylvania; Meeting Location: Park Ridge Hotel and Conference Center, 480 North Gulph Road, King of Prussia, PA 19406; Phone: 610–337–1800; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (EST).

2. Thursday, June 4, 2009; Atlanta, Georgia; Meeting Location: Georgian Terrace Hotel, 659 Peachtree Street NE., Atlanta, GA 30308; Phone: 800–651–2316; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (EST).

3. Tuesday, June 9, 2009; Lisle, Illinois; Meeting Location: Hilton Lisle, 3003 Corporate West Drive, Lisle, IL 60532; Phone: 630–505–0900; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (CST).

4. Thursday, June 11, 2009; Irving, Texas; Meeting Location: Westin Dallas Fort Worth Airport, 4545 West John Carpenter Freeway, Irving, TX 75063; Phone: 972–929–4500; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (CST).

5. Tuesday, June 16, 2009; Estero, Florida; Meeting Location: Hyatt Place Coconut Point, 23120 Via Villagio, Estero, FL 33928; Phone: 239–495–1395; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (EST).

6. Tuesday, June 23, 2009; Bethesda, Maryland; Meeting Location: Marriot Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814; Phone: 301–718–0200; Times: 2 p.m.–4:30 p.m. and 7 p.m.–9:30 p.m. (EST).

Please note that all meetings may close early if all business is finished.

Information on Services for Individuals With Disabilities

FEMA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting (*e.g.*, sign language), or need this meeting notice or other information from the meeting in another format, please notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible before each meeting date, so that arrangements can be made.

Dated: May 28, 2009.

David Garratt,

Deputy Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12817 Filed 6–1–09; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–19]

Notice of Proposed Information Collection: Comment Request; Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market)

AGENCY: Office of Affordable Housing Preservation, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 3, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@hud.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation, 451 7th Street, SW., Suite 6230, Washington DC 20410; e-mail *Theodore_K._Toon@hud.gov;* telephone (202) 708–0001 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market).

OMB Control Number, if applicable: 2502–0533.

Description of the need for the information and proposed use: The Mark to Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997 as extended by the Market to Market Extension Act of 2001. The information collection is required and will be used to determine the eligibility of FHA-insured multifamily properties for participation in the Mark to Market program and the terms on which such participation should occur as well as to process eligible properties from acceptance into the program through closing of the mortgage restructure in accordance with program guidelines. The result of participation in the program is the refinancing and restructure of the property's FHA-insured mortgage and, generally the reduction of Section 8 rent payments and establishment of adequately funded accounts to fund required repair and rehabilitation of the property.

Agency form numbers, if applicable: HUD–9624, HUD–9625, OPG 2.1, OPG 2.2, OPG 2.7, OPG 2.9, OPG 2.15, OPG 2.16, OPG 2.17, OPG 3.1, OPG 3.2, OPG 3.3, OPG 3.4, OPG 3.5, OPG 3.7, OPG 3.8, OPG 4.1, OPG 4.2, OPG 4.3, OPG 4.4, OPG 4.5, OPG 4.6, OPG 4.7, OPG 4.8, OPG 4.10, OPG 4.11, OPG 4.12, OPG 5.1, OPG 5.4, OPG 5.5, OPG 6.2, OPG 6.5, OPG 6.8, OPG 6.9, OPG 7.1, OPG 7.2, OPG 7.3, OPG 7.3TPA, OPG 7.5, OPG 7.6, OPG 7.7, OPG 7.8, OPG 7.9, OPG 7.11, OPG 7.12, OPG 7.13, OPG 7.14, OPG 7.16, OPG 7.21, OPG 7.22, OPG 7.23, OPG 7.24, OPG 7.25, OPG 8.1, OPG 9.10, OPG 9.11, OPG 10.2, OPG 10.4a, OPG 10.4b, OPG 10.6a, OPG 10.8, OPG Appendix M Attachment 1, OPG Appendix M Attachment 2, OPG 11.1,

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of annual burden hours is 663, the number of responses is 694, the frequency of response is on occasion, and the burden hour per response on average is 1.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 26, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–12806 Filed 6–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–45]

Housing for Older Persons Exemption From Familial Status Discrimination Prohibitions of the Fair Housing Act

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.

This information collection allows senior housing providers to demonstrate eligibility for an exemption from liability for familial status discrimination otherwise prohibited under the Fair Housing Act, as amended by the Housing for Older Persons Act of 1995.

DATES: *Comments Due Date: July 2, 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 (2529–0046) 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: Housing for Older Persons Exemption from Familial Status Discrimination Prohibitions of the Fair Housing Act.

OMB Approval Number: 2529–0046.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection allows senior housing providers to demonstrate eligibility for an exemption from liability for familial status discrimination otherwise prohibited under the Fair Housing Act, as amended by the Housing for Older Persons Act of 1995.

Frequency of Submission: On occasion, Other the HOPA ''55 or older'' housing exemption. Claim the HOPA exemption as an affirmative defense to a familial status discrimination complaint filed under the Fair Housing Act.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,000	1	1	0.45		5,500

Total Estimated Burden Hours: 5,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 22, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12811 Filed 6–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5297–N–03]

Notice of Proposed Information Collection: Comment Request; Notice of Application for Designation as a Single Family Foreclosure Commissioner

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 3, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Bruce Albright, Assistant General Counsel, Single Family Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9240, Washington, DC 20410–0500, telephone (202–708–0080) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting 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: Notice of Application for Designation as a Single Family Foreclosure Commissioner (SF Mortgage Foreclosure Act of 1994).

OMB Control Number, if applicable: 2510–0012.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to

do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Agency form numbers, if applicable: None.

Members of affected public: Business or Other For-Profit and Individuals or Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
30	1	.5	15

Status of the proposed information collection: Reinstatement of collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 22, 2009.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. E9–12704 Filed 6–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB # 1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before July 2, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Angela Walters, Appalachian National Scenic Trail, National Park Service, P.O Box 50, Harpers Ferry, WV 25425; Fax 304/535–6270, *e-mail: angela_walters@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail *James_Gramann@partner.nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/.*

Comments Received on the 60-Day Federal Register Notice

The NPS published a 60-Day Notice to solicit public comments on this ICR entitled ''Clearance of Collection of Information; Opportunity for Public Comment'' in the **Federal Register** on January 30, 2008 (73 FR 5588–5589). The comment period closed on March 31, 2008. After multiple notifications to stakeholders requesting comments, the NPS received one comment as a result of the publication of this 60-Day **Federal Register** Notice. The comment expressed concern over tax dollars being spent on this study. A response was sent to the individual, explaining the necessity of the survey for the NPS to work with its partners to better manage the Appalachian Trail lands. No further comment has been received.

SUPPLEMENTARY INFORMATION:

Title: Appalachian Trail Management Partner Survey.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The National Park Service Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The Appalachian National Scenic Trail is an unusual unit of the national park system, managed through a decentralized volunteer-based cooperative management system involving eight national forests, six other national park units, agencies in fourteen states, the Appalachian Trail Conservancy and citizen volunteers in 30 affiliated trail club organizations. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62) requires that the NPS develop goals and measure performance related to these goals. The Appalachian Trail Management Partner Survey (ATMPS) measures performance toward those goals through a partner satisfaction survey. The project is an element of the NPS Strategic Plan and the Department of the Interior (DOI) Strategic Plan.

The purpose of the ATMPS is to track the satisfaction of federal, state, and not-for-profit partner organizations and agencies receiving support from the Appalachian Trail Park Office (ATPO) to protect trail resources and provide for the public enjoyment and visitor experience of the Appalachian National Scenic Trail. The ATPO provides support to state and federal agencies, and not-for-profit organizations to assist them in fulfilling shared and delegated management activities in the management of the Appalachian National Scenic Trail. Achievement of on-the-ground results depends on the actions of these partner agencies and organizations. Progress towards management goals is measured by a satisfaction survey where key partners evaluate quality of support provided by ATPO. This effort is required by GPRA and other NPS and DOI strategic planning efforts. Data from the proposed survey is needed to assess performance regarding NPS GPRA goal IIb0. NPS performance on all goals measured in this study will contribute to DOI Department-wide performance reports.

Automated Data Collections: This information will be collected via electronic mail surveys.

Description of Respondents: Respondents include representatives from partner groups, including Nonprofit Organizations and State and Federal Agencies.

Estimated Average Number of Respondents: 57 respondents & 19 non-respondents.

Estimated Average Number of Responses: 57 responses & 19 non-responses.

Estimated Average Burden Hours Per Response: 10 minutes for respondents & 1 minute for non-respondents.

Frequency of Response: 1 time per respondent.

Estimated Total Annual Reporting Burden: 10 hours.

Comments are invited on: (1) The practical utility of the information being

gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being gathered; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 26, 2009.

Cartina Miller,

NPS, Information Collection Clearance Officer.

[FR Doc. E9–12712 Filed 6–1–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2009–N108; 91100–3740–GRNT 7C]

Meeting Announcements: North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) will also meet. This meeting is also open to the public, and interested persons may present oral or written statements.

DATES: *Council:* Meeting is July 8, 2009, 1–4 p.m. *Advisory Group:* July 9, 2009, 9 a.m. through 3 p.m. If you wish to present information at either meeting, contact Mike Johnson by June 23, 2009.

ADDRESSES: Both meetings will be held at the U.S. Fish and Wildlife Service National Conservation Training Center, 698 Conservation Way, Shepherdstown, WV 25443.

FOR FURTHER INFORMATION CONTACT: Mike Johnson, Council Coordinator and Advisory Group contact, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov*; or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.*

Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider U.S. Standard grant proposals at this meeting.

Advisory Group: The Advisory Group, named by the Secretary of the Interior under NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000), will hold its meeting to advise the Director, Fish and Wildlife Service, on the strategic direction and management of the NMBCA program. Proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA/index.shtm.*

Dated: May 26, 2009.

Paul Schmidt,

Assistant Director—Migratory Birds.

[FR Doc. E9–12795 Filed 6–1–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from April 13, to April 17, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th Floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, **Edson_Beall@nps.gov**.

Dated: May 27, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARIZONA

Maricopa County

Burgess Lateral Historic District, Adjacent to Arcadia Dr. between the Arizona Canal and Lafayette Blvd., between 47th Pl. and 47th St., Phoenix, 09000221, Listed, 4/16/09

FLORIDA

Hillsborough County

St. Andrews Episcopal Church, 505 N. Marion St., Tampa, 09000200, Listed, 4/15/09

MICHIGAN

Berrien County

Mary's City of David, 1158 E. Britain Ave., Benton Harbor, 09000201, Listed, 4/15/09

Delta County

Richter Brewery, 1615 Ludington St., Escanaba, 09000202, Listed, 4/15/09

Ottawa County,

Robbins, Nathaniel and Esther (Savidge), House, 20 S. 5th Ave., Grand Haven, 09000203, Listed, 4/16/09

Wayne County

River Terrace Apartments, 7700 E. Jefferson St., Detroit, 09000204, Listed, 4/15/09

MISSOURI

Jackson County

Jones, R. Bryson, House, 1045 W. 56th St., Kansas City, 09000205, Listed, 4/15/09

Jackson County

Pennbroke Apartments, 604 W. 10th St., Kansas City, 09000206, Listed, 4/15/09 (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS)

Jackson County

Villa Serena Apartment Hotel, 325 Ward Pkwy., Kansas City, 09000207, Listed, 4/15/09

OHIO

Clark County

Old Enon Road Stone Arch Culvert, Rocky Pt. Rd. approx. 185 ft. W. of Old Mill Rd., Enon, 09000209, LISTED, 4/16/09

Cuyahoga County

Inglewood Historic District, Inglewood Dr., Oakridge Dr., Cleveland Heights Blvd., Yellowstone & Glenwood Rds., & Quilliams, Cleveland Heights, 09000210, Listed, 4/15/09

Jackson County

Wells, Harvey, House, 403 E. A St., Wellston, 09000211, Listed, 4/14/09

Tuscarawas County

Railway Chapel, The, 301 Grant St., Dennison, 09000212, Listed, 4/15/09

OKLAHOMA

Blaine County

United States Post Office Watonga, 121 N. Noble Ave., Watonga, 09000213, Listed, 4/17/09 (Oklahoma Post Offices with Section Art MPS)

Coal County

United States Post Office Coalgate, 38 N. Main St., Coalgate, 09000214, Listed, 4/17/09 (Oklahoma Post Offices with Section Art MPS)

Harmon County

United States Post Office Hollis, 120 N. 2nd St., Hollis, 09000215, Listed, 4/17/09 (Oklahoma Post Offices with Section Art MPS)

Marshall County

United States Post Office Madill, 223 W. Lille Blvd., Madill, 09000216, Listed, 4/17/09 (Oklahoma Post Offices with Section Art MPS)

Nowata County

United States Post Office Nowata, 109 N. Pine St., Nowata, 09000217, Listed, 4/17/09 (Oklahoma Post Offices with Section Art MPS)

WEST VIRGINIA

Greenbrier County

Argabrite House, 504 Virginia St., Alderson, 08001236, Listed, 4/16/09

WISCONSIN

Columbia County

Goeres Park, 101 Fair St., Lodi, 09000197, Listed, 4/09/09

Eau Claire County

Roosevelt Avenue Historic District, 415,419,429,443,449 & 455 Roosevelt Ave., Eau Claire, 09000219, Listed, 4/15/09

Salsbury Row House, 302–310 W. Grand Ave., Eau Claire, 09000220, Listed, 4/15/09

[FR Doc. E9–12678 Filed 6–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 16, 2009.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 17, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Washington County

Butterfield Overland Mail Route Fayetteville Segments Historic District, W. of AR 265 in Lake Fayetteville Park, Fayetteville, 09000456

GEORGIA

Fulton County

Collier Heights Historic District, Bounded approximately by Hamilton E. Holmes Dr. on the E., Donald Lee Hollowell Pkwy. on the N., U.S. 285 on the W, U.S. 20, Atlanta, 09000457

Polk County

Rockmart Downtown Historic District, Roughly bounded by Water, Beauregard, Narble, and Elm Sts., Rockmart, 09000458

ILLINOIS

Cook County

East Village Historic District, (Ethnic (European) Historic Settlement in the city of Chicago (1860–1930) Bounded by Division St. and Chicago, Hermitage and Damen Aves., Chicago, 09000459

KANSAS

Sedgwick County

Broadview Hotel, 400 W. Douglas Ave., Wichita, 09000460

McLean, Elizabeth, House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 2359 N. McLean Blvd., Wichita, 09000461

PENNSYLVANIA

Berks County

Douglass, George, House, 19 Old Philadelphia Pike, Amity Township, 09000462

Lackawanna County

Madison, James, School, (Educational Resources of Pennsylvania MPS) 528 Quincy Ave., Scranton, 09000463

SOUTH CAROLINA

Richland County

South Carolina Memorial Garden, 1919 Lincoln St., Columbia, 09000464

[FR Doc. E9–12679 Filed 6–1–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 26, 2009, a proposed Consent Decree (''Decree'') in *United States et al.* v. *Cyprus Tohono Corporation,* Civil Action No. 4:09-cv-296, was lodged with the United States District Court for the District of Arizona.

The consent decree resolves a claim against the Cyprus Tohono Corporation brought by the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for damages for injuries to natural resources resulting from release of hazardous substances at the Cyprus Tohono Mine Site, located on the Tohono O'odham Nation, near North Komelik, Arizona.

Under the Consent Decree, the Defendant will pay $825,000 for damages to the Department of the Interior and the Tohono O'odham Nation, collectively acting as Trustees of the injured natural resources. The consent decree includes a covenant not to sue by the United States and the Nation under CERCLA for past damages for past injuries to natural resources. All other claims, including claims under CERCLA for future damages, are reserved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should reference

United States et al. v. *Cyprus Tohono Corporation,* Civil Action No. 4:09–cv–296 and DOJ Ref. No. 90–11–2–1240/1.

The Decree may be examined at the Office of Attorney General, Two Renaissance Square, 40 North Central Ave., Ste. 1200, Phoenix, AZ 85004–4408. During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7 (25 cents per page reproduction cost) for a copy of the consent decree, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–12662 Filed 6–1–09; 8:45 am]

P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on May 27, 2009, a proposed Consent Decree in *United States* v. *City of Lebanon, New Hampshire*, Civil Action No. 1:09–CV–180, was lodged with the United States District Court for the District of New Hampshire.

In this action, the United States seeks, *inter alia,* injunctive relief in relation to discharges by the City of Lebanon, New Hampshire (City) from its combined sewer overflows (CSOs), in violation of the City's National Pollutant Discharge Elimination System Permit issued under the Clean Water Act, 33 U.S.C. 1251, *et seq.* The Consent Decree requires the City, among other things, to eliminate discharges from all CSO outfalls by December 31, 2020; achieve specific sewer separation projects on a definitive schedule; eliminate illicit discharges; and submit and implement a monitoring, maintenance and corrective action plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Lebanon, New Hampshire*, D.J. Ref. 90–5–1–1–09227.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 53 Pleasant Street, Concord, NH, and at U.S. EPA Region 1, 1 Congress Street, Boston, MA. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $100.00 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–12730 Filed 6–1–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, DOL is soliciting comments concerning the proposed extension of the Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 3, 2009.

ADDRESSES: Send comments to Darrin A. King, Departmental Clearance Officer, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW., Washington, DC 20210. Mr. King can be reached on 202–693–4129 (this is not a toll free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov*

SUPPLEMENTARY INFORMATION:

I. Background

The Department is requesting OMB approval for the continued use of a generic Solicitation for Grant Application (SGA) format for information collection requirements for SGAs that extend beyond what is collected on currently approved standard forms. OMB approval of this generic SGA form will assist the Department to carry out its responsibilities under the Paperwork Reduction Act by accurately accounting for the public burden associated with grant applications through the promotion of a common structure for reporting the information collection requirements contained in DOL's SGAs.

Periodically, DOL solicits applications for grants through issuing a SGA. To ensure that grants are awarded to the applicant best suited to perform the functions of the grant, applicants are generally required to submit a two-part application. The first part of DOL's grant applications consists of submitting the Standard Form 424 (SF–424), ''Application for Federal Assistance.'' The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work and/or selection criteria.

The information collected in response to solicitations for grant applications has been and will be used by the

Department of Labor for awarding grants to the applicants most suited for fulfilling the mission of the grant.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change of a currently approved collection.

Agency: Office of the Assistant Secretary for Administration and Management.

Title: Generic Solicitation for Grant Applications.

OMB Number: 1225–0086 (formerly 1205–0458).

Agency Form Number: Not applicable.

Affected Public: Not-for-profit institutions and state, local or tribal governments.

Total Estimated Annual Respondents: 5,750.

Estimated Average Time per Response: 20 hours per application.

Total Estimated Annual Burden Hours: 115,000.

Total Estimated Burden Cost (excludes hourly wage costs): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 27th day of May 2009.

Darrin A. King,

Departmental Clearance Officer, Office of the Assistant Secretary for Administration and Management.

[FR Doc. E9–12673 Filed 6–1–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, DOL is soliciting comments concerning the proposed extension of the Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 3, 2009.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Darrin A. King, Departmental Clearance Officer, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW., Washington, DC 20210. Mr. King can be reached on 202–693–4129 (this is not a toll free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) conducts a variety of voluntary Customer Satisfaction Surveys of regulated/non-regulated entities, which are specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Service Standards, September 11, 1993. These Customer Satisfaction Surveys provide information on customer attitudes about the delivery and quality of agency products/services and are used as part of an ongoing process to improve DOL programs. This generic clearance allows agencies to gather information from both Federal and non-Federal users.

In addition to conducting Customer Satisfaction Surveys, the Department also includes the use of evaluation forms for those DOL agencies conducting conferences. These evaluations are helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

II. Current Actions

Over the past three years the DOL has conducted more than two dozen customer satisfaction surveys and conference evaluations, which have helped assess the Department's products and services and has led to improvements in areas deemed necessary. Office of Management and Budget approval for this collection of information expires September 30, 2009. DOL proposes to seek continued approval for this collection of information for an additional three years.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Assistant Secretary for Administration and Management.

Title: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Number: 1225–0059.

Affected Public: Individuals and households; business or other for-profit; not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Estimated Total Respondents/ Responses: 200,000.

Frequency: On occasion and usually only one time per respondent.

Average Time per Response: Varies by survey/evaluation generally ranging from 3 to 15 minutes with an average of approximately 6 minutes.

Total Estimated Annual Burden Hours: 20,000.

Total Estimated Burden Cost (excludes hourly wage costs): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 22nd day of May 2009.

Darrin A. King,

Departmental Clearance Officer, Office of the Assistant Secretary for Administration and Management.

[FR Doc. E9–12693 Filed 6–1–09; 8:45 am]

BILLING CODE 4510–23–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–11]

Notice of the June 10, 2009 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 2 p.m., Wednesday, June 10, 2009.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Romell Cummings via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss issues related to suspension and/or termination of Compact programs with certain countries eligible for assistance under the Millennium Challenge Act of 2003 (MCA); discuss progress on proposed and existing Compacts with certain MCA-eligible countries; discuss MCC's Threshold Program; and consider certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: May 28, 2009.

Henry C. Pitney,

Acting Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E9–12904 Filed 5–29–09; 4:15 pm]

BILLING CODE 9210–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

May 27, 2009.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director for Guidelines & Panel Operations, Jillian Miller, at 202/682–5004. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Supplementary Information

Agency: National Endowment for the Arts.

Title: Panelist Profile Form.

Frequency: Every three years.

Affected Public: Individuals.

Estimated Number of Respondents: 250.

Total Burden Hours: 41.7.

Total Annualized Capital/Start Up Costs: 0.

Total Annual Costs (Operating/ Maintaining Systems or Purchasing Services): 0.

The National Endowment for the Arts enriches our nation and its diverse cultural heritage by supporting works of artistic excellence, advancing learning in the arts, and strengthening the arts in communities throughout the country.

With the advice of the National Council on the Arts and advisory panels, the Chairman establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the Endowment's enabling legislation, as amended, directs the Chairman to utilize advisory panels to review applications and to make recommendations to the National Council on the Arts, which in turn makes recommendations to the Chairman.

The legislation requires the Chairman ''(1) To ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation of lay individuals who are knowledgeable about the arts * * *'' In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than 3 consecutive years. To assist with efforts to meet these legislated mandates regarding representation on advisory panels, the endowment has established an Automated Panel Bank System (APBS), a computer database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the Arts Endowment.

The Panelist Profile Form, for which clearance is requested, is used to gather basic information from qualified individuals recommended by the arts

community; arts organizations; Members of Congress; the general public; local, State, and regional arts organizations; Endowment staff; and others.

Kathleen Edwards,

Support Services Supervisor, National Endowment for the Arts.

[FR Doc. E9–12682 Filed 6–1–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposal Review Panel for Chemistry (1191).

Date/Time: June 15, 2009, 5 p.m.–9 p.m.; June 16, 2009, 8:30 a.m.–5:30 p.m.; June 17, 2009, 8:30 a.m.–1 p.m.

Place: University of Washington, Bagley Hall, Seattle, WA 98195–1700.

Type of Meeting: Part-Open.

Contact Person: Katharine Covert, National Science Foundation, Arlington, VA, 703–292–4950.

Purpose of Meeting: To conduct a post award site visit evaluation for the Center for Enabling New Transformations through Catalysis (CENTC), a research center funded through the Centers for Chemical Innovation (CCI) Program.

Agenda:

Monday, June 15, 2009

5 p.m.–9 p.m. Closed—Executive Session.

Tuesday, June 16

8:30 a.m.–11:40 a.m. Open—Welcome, Overview of Center, Oral Research Presentations.
11:40 a.m.–1 p.m. Lunch.
12:30 p.m.–1 p.m. Closed Executive Session.
1 p.m.–1:50 p.m. Open—Oral Research Presentations.
1:50 p.m.–3 p.m. Open—Poster Session.
3 p.m.–5 p.m. Open—Presentations on Center Management and Impacts on Innovation, Education, Diversity and Outreach.
5 p.m.–5:30 p.m. Closed—Executive Session.

Wednesday, June 17

8:30 a.m.–1 p.m. Closed—Executive Session, Report Preparation.

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 28, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–12721 Filed 6–1–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0220]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 7, 2009 to May 20, 2009. The last biweekly notice was published on May 19, 2009 (73 FR 370501).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E–Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public

File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer ™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: April 23, 2009.

Description of amendments request: The amendment would delete those portions of the Technical Specifications (TSs) superseded by Title 10 of the Code of Federal Regulations (10 CFR) Part 26, Subpart I. This change is consistent with Nuclear Regulatory Commission approved Revision 0 to Technical Specification Task Force Improved Standard Technical Specification Change Traveler, TSTF 511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.'' The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923) as part of the Consolidated Line Item Improvement Process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety-related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the Technical Specification requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components or the manner in which structures, systems, or components are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety-related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety-related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Removal of plant-specific Technical Specification administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th Floor, Baltimore, MD 21202.

NRC Acting Branch Chief: John Boska.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 26, 2009.

Description of amendment request: The proposed amendment would delete the Technical Specifications (TS) requirements related to hydrogen recombiners and hydrogen monitors. The proposed TS changes support implementation of the revisions to 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' which became effective on October 16, 2003. These changes are consistent with Revision 1 of the NRC-approved Technical Specifications Task Force (TSTF) Standard Technical Specifications Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of opportunity for public comments on TSTF–447, Revision 1 in the **Federal Register** on August 2, 2002 (67 FR 50374), soliciting comments on a model safety evaluation and a model no significant hazards consideration (NSHC) determination for the elimination of requirements for hydrogen recombiners, and hydrogen and oxygen monitors from the TS. Based on its evaluation of the public comments received, the NRC staff made appropriate changes to the models and included final versions in a notice of availability published in the **Federal Register** on September 25, 2003 (68 FR 55416), regarding the adoption of TSTF–447, Revision 1, as part of the NRC's consolidated line item improvement process. The licensee affirmed the applicability of the model NSHC determination in its application dated February 26, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiners and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI [Three Mile Island], Unit 2 accident, can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves NSHC.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 14, 2008.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TSs) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with Nuclear Regulatory Commission

(NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the proposed amendments would revise TS 3.7.10, ''Control Room Area Ventilation,'' and TS Section 5.5, ''Programs and Manuals.'' The NRC staff issued a ''Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process'' associated with TSTF–448, Revision 3, in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination and a model license amendment request. In its application dated July 14, 2008, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Implementation of the proposed amendment to the TSs will impact the Updated Final Safety Analysis Report (UFSAR). As a result, it will be necessary to revise various sections of the UFSAR in accordance with 10 CFR 50.71(e).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Melanie C. Wong.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: April 27, 2009.

Description of amendment request: The proposed changes would delete those portions of Technical Specifications (TSs) superseded by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, Subpart I, consistent with U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) traveler TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

The NRC issued a ''Notice of Availability of Model Safety Evaluation, Model No Significant Hazards Determination, and Model Application for Licensees That Wish To Adopt TSTF–511, Revision 0, 'Eliminate Working Hour Restrictions From TS 5.2.2 To Support Compliance With 10 CFR Part 26' '' in the **Federal Register** on December 30, 2008 (73 FR 79923). In its application dated April 27, 2009, the licensee affirmed the applicability of the model no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR 26. Removal of the Technical Specification requirements will be performed concurrently with the implementation of the 10 CFR 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Removal of plant-specific Technical Specification administrative requirements will not reduce a margin of safety because the requirements in 10 CFR 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorneys for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 2, 2009.

Description of amendment request: The proposed change will modify Technical Specification (TS) 3.3.1.1, ''Reactor Protective Instrumentation,'' and TS 3.3.2.1, ''Engineered Safety Feature Actuation System Instrumentation.'' Specifically, Table 3.3–1, Table 4.3–1, and Table 3.3–3, respectively, will adopt a Mode of Applicability for the Logarithmic (Log) Power Level High, Pressurizer Pressure Low, Steam Generator (SG) Pressure Low, and the SG Differential Pressure and Level Low functions to be consistent with the improved Standard TSs (STS) of NUREG–1432, Revision 3,[1] ''Standard Technical Specifications, Combustion Engineering Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change acts to reconcile a difference between Emergency Feedwater (EFW) TS 3.7.1.2 and Table 3.3–3 of TS 3.3.3.2, or differences between the current ANO–2 [Arkansas Nuclear One, Unit 2] TSs and the STS in relation to Reactor Protective System (RPS) or ESFAS functions. The TS 3.7.1.2 Mode of Applicability for EFW is based on plant design basis. Revising the associated actuation instrumentation Mode of Applicability to match that of TS 3.7.1.2 will continue to ensure that automatic actuation of the EFW system will occur during any Mode 1, 2, or 3 event that results in a Steam Generator (SG) actuation setpoint being reached. The change is not associated with any accident precursor or initiator. EFW will continue to be automatically actuated and capable of a supporting plant cooldown through to Mode 4, where the Shutdown Cooling (SDC) system may be placed in service for decay heat removal purposes. Upon a loss of SDC, EFW may be manually initiated (if available) or a back-up source of SG makeup can be placed in service, such as the non-safety Auxiliary Feedwater (AFW) pump or other non-safety Main Feedwater (MFW) system pumps. These non-safety pumps can be powered from the onsite Alternate AC [Alternating Current] Diesel Generator should a loss of offsite power event occur.

Changes to the Modes of Applicability for the Log Power Level High, Pressurizer Pressure Low, and SG Pressure Low reactor trip functions do not involve physical plant changes or changes to the current safety analysis. These functions will continue to provide their respective protective feature in the operational modes consistent with the design basis and STS. None of these functions are associated with accident precursors.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in any plant modifications or change in the way the plant is designed to function. The proposed change is not associated with any accident precursor or initiator.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

EFW will continue to be automatically actuated and capable of supporting a plant cooldown to Mode 4, where the Shutdown Cooling (SDC) system may be placed in service for decay heat removal purposes. Upon a loss of SDC, EFW may be manually initiated (if available) or a back-up source of SG makeup can be placed in service, such as the non-safety Auxiliary Feedwater (AFW)

[1] Incorrectly referred to as ''Revision 3.1'' in the Entergy Operations, Inc. March 2, 2009, application.

pump or other non-safety Main Feedwater (MFW) system pumps. These non-safety pumps can be powered from the onsite Alternate AC Diesel Generator should a loss of offsite power event occur.

Changes to the Modes of Applicability for the Log Power Level High, Pressurizer Pressure Low, and SG Pressure Low reactor trip functions do not involve physical plant changes or changes to the current safety analysis. These functions will continue to provide their respective protective feature in the operational modes consistent with the design basis and STS.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No.1, Rockingham County, New Hampshire

Date of amendment request: April 16, 2009.

Description of amendment request: The proposed change is that Facility Operating License NPF–86 for Seabrook Station be amended to reflect a change in the legal name of the Licensee and Co-owner from ''FPL Energy Seabrook, LLC'' to ''NextEra Energy Seabrook, LLC.''

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This request is for administrative changes only. No actual facility equipment or accident analyses will be affected by the proposed changes. Therefore, this request has no impact on the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

This request is for administrative changes only. No actual facility equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request is for administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions of operation. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: Harold Chernoff.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES Units 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: March 24, 2009, as supplemented by letters dated April 30 and May 12, 2009.

Description of amendment request: The proposed amendments would change the SSES Units 1 and 2 Technical Specifications (TSs) 3.8.1 for AC Sources—Operating, to extend the allowable Completion Time for the Required Actions associated with one offsite circuit inoperable due to the replacement of Startup Transformer Number 20 (ST No. 20). The proposed change to SSES Units 1 and 2 TS would allow for a one-time only extension of limiting condition for operation 3.8.1 Action A. 3 to 10 days during replacement of ST No. 20, while both units remain at power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposal would change the Technical Specifications 3.8.1, ''AC Sources—Operating,'' to extend, on a one-time basis, the allowable Completion Time for Required Action A.3, from 72 hours to 10 days.

The consequence of a loss of offsite power (LOOP) event has been evaluated in the FSAR [final safety analysis report] and the Station Blackout evaluation. Increasing the completion time for one offsite power source from 72 hours to 10 days does not increase the consequences of a LOOP event nor change the evaluation of LOOP events as stated in the FSAR or Station Blackout evaluation.

The proposed one-time only change to the TS 3.8.1 Required Action A.3 Completion does not, of [by] itself, result in an increase in the risk of plant operation. The incremental conditional core damage probability (ICCDP) and incremental conditional large early release probability (ICLERP) do not exceed the regulatory guidance thresholds for these values.

Therefore, this proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in a change in the manner in which the electrical distribution subsystems provide plant protection. The change does not alter assumptions made in the safety analysis. Allowing the completion time for Action A.3 to increase from 72 hours to 10 days is a one-time change that will allow continued operation of Unit 1 and 2 while replacing ST No. 20.

The accident analyses affected by this proposed change are the LOOP events discussed in the FSAR. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. The potential for the loss of other plant systems or equipment to mitigate the effects of an accident is not altered.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Limit. There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor [would there be] any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the Safety Limits or any other margin of safety. The radiological dose consequence acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Acting Branch Chief : John P. Boska.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 22, 2009.

Description of amendment request: The proposed amendment would revise the definition of the fully withdrawn position of the Rod Cluster Control Assemblies (RCCAs) to minimize localized RCCA wear. Currently, the fully withdrawn position for the RCCAs is defined in the Technical Specifications (TSs) as being within the interval of 222 to 228 steps withdrawn (*i.e.*, steps above rod bottom). The proposed change would allow the fully withdrawn position to be defined as being within the interval of 222 to 230 steps withdrawn.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The revised RCCA definition of FULLY WITHDRAWN will not result in any design or regulatory limit being exceeded with respect to the safety analyses documented in the [Updated Final Safety Analysis Report (UFSAR)]. The change has been evaluated to determine the effect on reactor physics, transient analysis (Non-[loss-of-coolant accident (LOCA)]), LOCA analysis, and mechanical operation of the RCCAs. The evaluations have determined that the reload analysis and assumed control rod drop time parameters remain bounding. The specific FULLY WITHDRAWN position will be specified in the reload analysis for each operating cycle. Prior to each operating cycle the actual rod drop times are required to be confirmed as less than or equal to 2.7 seconds per TS Surveillance 4.1.3.3. In addition, since the change does not impact any conditions that would initiate a transient, the probability of previously analyzed events is not increased. Also, RCCA repositioning will reduce the possibility of rod cladding failure, thereby minimizing the chance of absorber material being introduced into the reactor coolant system. Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The RCCAs will continue to meet their functional requirements and will perform as designed during design basis events. The RCCAs will remain inserted in the guide thimbles of the fuel assemblies during operation with the proposed withdrawal limits; therefore their performance is unaffected by this change. The RCCAs will maintain their mechanical integrity and remain structurally intact during a design basis event. The effect of periodically repositioning the RCCAs is bounded by the analyses in the UFSAR. Also, RCCA repositioning will reduce the possibility of rod cladding failure, thereby minimizing the chance of absorber material being introduced into the reactor coolant system. Therefore the proposed change will not create a new or different kind of accident [from any accident previously evaluated].

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The revised RCCA FULLY WITHDRAWN definition has an insignificant effect on control rod drop time. The rod drop time will continue to be bounded by that assumed in the UFSAR and required by TS. Prior to each operating cycle the actual rod drop times are required to be confirmed as less than or equal to 2.7 seconds per TS 4.1.3.3. No change is being made to the lowest allowable position; therefore prior assessments regarding minimal rod insertion into the active fuel region remain applicable and unchanged.

Consequently, there is no impact on previously analyzed conditions for both axial and radial power distributions, critical boron concentrations and temperature dependent shutdown margins. Therefore, the proposed change does not involve a significant reduction in any safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, with changes in the areas noted above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: January 15, 2009.

Brief description of amendment: The amendments modified Technical Specifications (TSs) 3.3.10, 3.6.7, and 5.6.6 to delete the requirements related to hydrogen recombiners and hydrogen monitors. The TS changes support implementation of the revisions to 10 CFR 50.44, ''Combustible gas control system for nuclear power reactors,'' that became effective on October 16, 2003. The changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

Date of issuance: May 14, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1–173; Unit 2–173; Unit 3–173.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 10, 2009 (74 FR 10307).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 2009.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 6, 2008.

Brief Description of amendments: The amendments remove work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' of 10 CFR Part 26 specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: May 7, 2009.

Effective date: As of the date of issuance and shall be implemented no later than October 1, 2009.

Amendment Nos.: 253 and 281.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the technical specifications.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4767).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated May 7, 2009.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 6, 2009.

Brief description of amendment: The amendment removes work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' of 10 CFR Part 26 specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 6.2.2.f at the Shearon Harris Nuclear Power Plant, Unit 1.

Date of issuance: May 7, 2009.

Effective date: Date of issuance, to be implemented by October 1, 2009.

Amendment No.: 130.

Renewed Facility Operating License No. NPF–63: The amendment revises the technical specifications and facility operating license.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4769).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 7, 2009.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 6, 2009.

Brief description of amendment: The amendment removes work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' of 10 CFR Part 26 specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the H. B. Robinson Steam Electric Plant, Unit 2.

Date of issuance: May 7, 2009.

Effective date: Effective as of the date of issuance and shall be implemented no later than October 1, 2009.

Amendment No.: 221.

Renewed Facility Operating License No. DPR–23: The amendment revises the technical specifications and facility operating license.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4768).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 7, 2009.

Public comments received as to proposed no significant hazards consideration (NSHC): No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois.

Date of application for amendment: June 26, 2008.

Brief description of amendment: The amendments revise Technical Specification Surveillance Requirements 3.8.1.7, 3.8.1.12, 3.8.1.15, and 3.8.1.20 for the Braidwood and Byron emergency diesel generator (EDG) start time. The current requirement is to have the EDG within voltage and frequency limits within 10 seconds after the start signal. The revised change is to have the EDG above minimum voltage and frequency within 10 seconds and verified to be within voltage and frequency limits at steady state conditions. The revision is consistent with Technical Specification Task Force (TSTF) Standard Change Traveler, TSTF–163, ''Minimum vs. Steady State Voltage and Frequency,'' Revision 2.

Date of issuance: May 11, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Braidwood Unit 1–159; Braidwood Unit 2–159; Byron Unit No. 1–164; and Byron Unit No. 2–164.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in ***Federal Register:*** August 26, 2008 (73 FR 50360).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2009.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 6, 2008.

Brief description of amendment: The amendment removes work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' of 10 CFR Part 26 specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the Crystal River Unit 3 Nuclear Generating Plant.

Date of issuance: May 7, 2009.

Effective date: Date of issuance, to be implemented by October 1, 2009.

Amendment No.: 233.

Facility Operating License No. DPR–72: Amendment revises the technical specifications.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4773).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 7, 2009.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 2, 2008, as supplemented by e-mails dated February 18 and May 5, 2009.

Brief description of amendment: The amendment made administrative changes to the Technical Specifications (TSs) for the Fort Calhoun Station, Unit 1 (FCS). The proposed changes corrected several typographical errors and made administrative clarifications to the TSs. The NRC staff denies the heading changes to TS Limiting Condition for Operation (LCO) 2.13 Table 2–11 and TS LCO Table 2–1 which are not editorial or administrative in nature and, therefore, are not acceptable.

Date of issuance: May 12, 2009.

Effective date: As of its date of issuance and shall be implemented within 180 days.

Amendment No.: 259.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 4, 2008 (73 FR 65697). The supplemental e-mails dated February 18 and May 5, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on November 4, 2008 (73 FR 65697).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 12, 2009.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272 and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 21, 2008.

Brief description of amendments: The amendments delete the requirements related to plant staff working hours from Section 6.0, ''Administrative Controls'' of the respective plants' Technical Specifications (TSs). The requirements being deleted had been incorporated into the TSs based on the guidance in Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours.'' The guidance in GL 82–12 has been superseded by the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Part 26, ''Fitness for Duty Programs,'' Subpart I, ''Managing Fatigue.''

Date of issuance: May 14, 2009.

Effective date: As of the date of issuance, to be implemented by October 1, 2009.

Amendment Nos.: 177, 290 and 274.

Facility Operating License Nos. NPF–57, DPR–70 and DPR–75: The amendments revised the TSs and the Licenses.

Date of initial notice in ***Federal Register:*** October 7, 2008 (73 FR 58676).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 2009.

No significant hazards consideration comments received: No

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 18, 2008.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating'' requirements. The change is in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–325–A, Revision 0, ''ECCS Conditions and Required Actions with <100% Equivalent ECCS Flow.''

Date of issuance: May 15, 2009.

Effective date: Effective as date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 182.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 2008 (73 FR 58680).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2009.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E–Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—Primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—Primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—Does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Virginia Electric and Power Company, Docket No. 50–280, Surry Power Station, Unit No. 1, Surry County, Virginia

Date of amendment request: May 5, 2009, as supplemented by letter dated May 6, 2009.

Brief Description of amendments: This amendment revised Technical Specifications (TSs) 6.4.Q, ''Steam Generator (SG) Program,'' and TS 6.6.3, ''Steam Generator Tube Inspection Report,'' to modify the interim alternate repair criteria for SG B tube repair to allow tubes with a permeability variation in the lowest one inch of the tube sheet to remain in service during Refueling Outage 22 (spring 2009) and the subsequent operating cycle. The amendment also revised reporting requirement TS 6.6.A.3, ''SG Tube Inspection Report.''

Date of issuance: May 7, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 264.

Facility Operating License No. DPR–32: Amendment revises the license and TSs.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final no significant hazards consideration determination are contained in a safety evaluation dated May 7, 2009.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc.,120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

Dated at Rockville, Maryland, this 21st day May 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–12511 Filed 6–1–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0014]

Draft Regulatory Guides: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guides DG–1191, DG–1192, and DG–1193.

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7650 or e-mail to *Wallace.Norris@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment three Draft Regulatory Guides (DGs) in the agency's ''Regulatory Guide'' series. Specifically, these are Revision 35 of Regulatory Guide (RG) 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III'' (temporarily identified by its task number, DG–1191); Revision 16 of RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1'' (temporarily identified by its task number DG–1192); and Revision 3 of RG 1.193, ''ASME Code Cases Not Approved for Use'' (temporarily identified by its task number DG–1193).

This series was developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of NRC's regulations, techniques the staff uses in evaluating specific problems or postulated accidents, and data the staff needs in its review of applications for permits and licenses.

II. Discussion

Regulatory Guide 1.84 (temporarily identified by its task number, DG–1191) lists all Section III Code Cases that NRC has approved for use. For Revision 35 of the guide, NRC reviewed the Section III Code Cases listed in Supplements 2–11 to the 2004 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code and Supplement 0 to the 2007 Edition (Supplement 0 also serves as Supplement 12 to the 2004 Edition). Appendix A to this guide lists the supplements reviewed, the applicable edition, and the date on which each supplement was approved by the ASME Board on Nuclear Codes and Standards. Appendix B is a list of the Section III Code Cases addressed in the eleven supplements. Finally, Appendix C is a current list of all Section III Code Cases.

Provisions of the ASME BPV Code have been used since 1971 as one part of the framework to establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety. Among other things, ASME standards committees develop improved methods for the construction and inservice inspection (ISI) of ASME Classes 1, 2, 3, MC (metal containment), and CC (concrete containment) nuclear power plant components. A broad spectrum of stakeholders participate in the ASME process, which helps to ensure that the various interests are considered.

The regulation in Title 10, Part 50, of the *Code of Federal Regulations* (CFR), 10 CFR 50.55a(c), ''Reactor Coolant Pressure Boundary,'' requires, in part,

that components of the reactor coolant pressure boundary must be designed, fabricated, erected, and tested in accordance with the requirements for Class 1 components of Section III, ''Rules for Construction of Nuclear Power Plant Components,'' of the ASME BPV Code or equivalent quality standards. ASME publishes a new edition of the BPV Code, which includes Section III, every 3 years and new addenda every year. The latest editions and addenda of Section III that NRC has approved for use are referenced in 10 CFR 50.55a(b).

ASME also publishes Code Cases quarterly. Code Cases provide alternatives developed and approved by ASME. This RG identifies the Code Cases that have been determined by NRC to be acceptable alternatives to applicable parts of Section III. Section III Code Cases not yet endorsed by NRC may be used by a licensee or applicant through 10 CFR 50.55a(a)(3). That section permits the use of alternatives to the Code requirements referenced in 10 CFR 50.55a provided that the proposed alternatives result in an acceptable level of quality and safety and that their use is authorized by the Director of the Office of Nuclear Reactor Regulation.

The ASME Code is incorporated by reference into 10 CFR 50.55a. Code Cases approved by NRC provide an acceptable voluntary alternative to the mandatory ASME Code provisions. Therefore, NRC will amend 10 CFR 50.55a to incorporate by reference the new Code Cases and revisions to existing Code Cases listed in this guide and to state the requirements governing the use of Code Cases. Because of continuing change in the status of Code Cases, the staff plans periodic updates to 10 CFR 50.55a and this guide to accommodate new Code Cases and any revisions of existing Code Cases.

For Revision 16 of RG 1.147 (temporarily identified by its task number DG–1192), NRC reviewed the Section XI Code Cases listed in Supplements 2 through 11 to the 2004 Edition and Supplement 0 published with the 2007 Edition (Supplement 0 also serves as Supplement 12 to the 2004 Edition) of the ASME BPV Code. Appendix A to this guide lists the supplements reviewed, the edition, the supplement number, and the date on which the supplement was approved by the ASME Board on Nuclear Codes and Standards. Appendix B is a list of the Section XI Code Cases published by ASME in the 11 supplements. Finally, Appendix C is a current list of all Section XI Code Cases.

The regulation in 10 CFR 50.55a(g), ''Inservice Inspection Requirements,'' requires, in part, that Classes 1, 2, 3, metal containment (MC) and concrete containment (CC) components and their supports meet the requirements of Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the ASME BPV Code or equivalent quality standards. Every 3 years, ASME publishes a new edition of the BPV Code, including Section XI, and new addenda are published every year. The latest editions and addenda of Section XI that NRC has approved for use are referenced in 10 CFR 50.55a(b). ASME also publishes Code Cases quarterly. Code Cases provide alternatives to existing Code requirements that ASME developed and approved. This RG identifies the Code Cases that NRC has determined to be acceptable alternatives to applicable parts of Section XI. Licensees may use these Code Cases without requesting authorization from NRC provided they are used with any identified limitations or modifications. Section XI Code Cases not yet endorsed by NRC may be used by a licensee or applicant through 10 CFR 50.55a(a)(3). That section permits the use of alternatives to the Code requirements referenced in 10 CFR 50.55a provided the proposed alternatives result in an acceptable level of quality and safety and that their use is authorized by the Director of the Office of Nuclear Reactor Regulation.

The ASME Code is incorporated by reference into 10 CFR 50.55a, which NRC will amend to incorporate this guide by reference; 10 CFR 50.55a states the requirements governing the use of Code Cases. Because of continuing change in the status of Code Cases, the staff plans periodic updates to 10 CFR 50.55a and this guide to accommodate new Code Cases and any revisions of existing Code Cases. Code Cases approved by NRC provide an acceptable voluntary alternative to the mandatory ASME Code provisions.

Revision 3 of RG 1.193 (temporarily identified by its task number DG–1193) lists the Code Cases that NRC has determined not to be acceptable for use on a generic basis. A brief description of the basis for the determination is provided with each Code Case. Licensees may submit a request to implement one or more of the Code Cases listed through 10 CFR 50.55a(a)(3), which permits the use of alternatives to the Code requirements referenced in 10 CFR 50.55a, provided the proposed alternatives result in an acceptable level of quality and safety. Licensees must submit a plant-specific request that addresses NRC's concerns about the Code Case at issue.

In 10 CFR Part 50 ''Domestic Licensing of Production and Utilization Facilities,'' Section 50.55a(c), ''Reactor Coolant Pressure Boundary,'' requires, in part, that components of the reactor coolant pressure boundary be designed, fabricated, erected, and tested in accordance with the requirements for Class 1 components of Section III, ''Rules for Construction of Nuclear Power Plant Components,'' of the ASME BPV Code or equivalent quality standards. Section 50.55a(f), ''Inservice Testing Requirements,'' requires, in part, that Classes 1, 2, and 3 components and their supports meet the requirements of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) or equivalent quality standards. Finally, 10 CFR 50.55a(g), ''Inservice Inspection Requirements,'' requires, in part, that Classes 1, 2, 3, MC and CC components and their supports meet the requirements of Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the ASME BPV Code or equivalent quality standards.

III. Further Information

The NRC staff is soliciting comments on DG–1191, DG–1192, and DG–1193. Comments may be accompanied by relevant information or supporting data and should mention DG–1191, DG–1192, or DG–1193 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, *Mail Stop:* TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0014]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1191, DG–1192, and DG–1193 may be directed to the NRC contact, Wallace E. Norris, at (301) 251–7650 or e-mail to *Wallace.Norris@nrc.gov*.

Comments would be most helpful if received by August 17, 2009. Comments

received after that date will be considered if it is practical to do so, but NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1191, DG–1192, and DG–1193 are available through NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies also are available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*) under Accession No. ML080910389 (DG–1191), ML080910245 (DG–1192), and ML080920854 (DG–1193).

In addition, regulatory guides are available for inspection at NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR also can be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 21st day of May 2009.

For the Nuclear Regulatory Commission.

James E. Lyons,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. E9–12750 Filed 6–1–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Amendment to June 3–5, 2009, ACRS Meeting—Federal Register Notice

The **Federal Register** Notice for the ACRS meeting scheduled to be held on June 3–5, 2009, is being amended to notify the following:

In accordance with Subsection 10(d) Public Law 92–463, it may be necessary to close portions of the meeting to discuss and protect information classified as proprietary to Mitsubishi Heavy Industries and its contractors pursuant to 5 U.S.C. 552b (c) (4).

The notice of this meeting was previously published in the **Federal Register** on Monday, May 18, 2009 [74 FR 23222–23224]. All other items remain the same as previously published.

Further information regarding this meeting can be obtained by contacting Girija Shukla, Cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m., (ET).

Dated: May 27, 2009.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–12753 Filed 6–1–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0138; Form RI 30–9]

Proposed Collection; Request for Extension of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. This information collection, ''Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity'' (OMB Control No. 3206–0138; Form RI 30–9), informs former disability annuitants of their right to request restoration under title 5, U.S.C. Section 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–12812 Filed 6–1–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0134; Standard Form 2803 and Standard Form 3108]

Proposed Collection; Request for Comments Review of an Existing Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 10413, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. ''Application to Make Deposit or Redeposit (CSRS)'' (OMB Control No. 3206–0134; Standard Form 2803) and ''Application to Make Service Credit Payment for Civilian Service (FERS)'' (OMB Control No. 3206–0134; Standard Form 3108) are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance

of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. This gives us a total of 150 filings. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management 1900 E Street, NW., Room 4H28, Washington DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–12814 Filed 6–1–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0245; Form RI 20–120]

Submission for OMB Review; Comment Request for Review of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a currently approved information collection. ''Request for Change to Unreduced Annuity'' (OMB Control No. 3206–0245; Form RI 20–120) is designed to collect information OPM needs to comply with the wishes of the retired Federal employee whose marriage has ended. This form provides an organized way for the retiree to give us everything at one time.

There are approximately 5,000 requests annually. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and

Alexander Hunt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–12815 Filed 6–1–09; 8:45 am]

BILLING CODE 6325–38–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11754 and #11755]

Tennessee Disaster Number TN–00027

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1839–DR), dated 05/15/2009.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/10/2009.

DATES: *Effective Date:* 05/21/2009.

Physical Loan Application Deadline Date: 07/14/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee, dated 05/15/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Humphreys.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–12722 Filed 6–1–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11722 and #11723]

Georgia Disaster Number GA–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of GEORGIA (FEMA–1833–DR), dated 04/23/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

Incident Period: 03/26/2009 through 04/13/2009.

DATES: *Effective Date:* 05/21/2009.

Physical Loan Application Deadline Date: 06/22/2009.

EIDL Loan Application Deadline Date: 01/23/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of GEORGIA, dated 04/23/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (*Physical Damage and Economic Injury Loans*):
Baker, Early.

Contiguous Counties: (*Economic Injury Loans Only*):
Alabama: Henry, Houston.
Georgia: Clay.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–12723 Filed 6–1–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form 11–K; OMB Control No. 3235–0082; SEC File No. 270–101.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 11–K (17 CFR 249.311) is the annual report designed for use by employee stock purchase, savings and similar plans to comply with the reporting requirements under Section 15(d) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78o(d)). Section 15(d) establishes a periodic reporting obligation for every issuer of a class of securities registered under the Securities Act of 1933 (the ''Securities Act'') (15 U.S.C. 77a *et seq.*). Form 11–K provides employees of an issuer with financial information so that they can assess the performance of the investment vehicle or stock plan. Form 11–K takes approximately 30 burden hours per response and is filed by 2,000 respondents for total of 60,000 burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 26, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12719 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59991; File No. PCAOB–2008–06]

Public Company Accounting Oversight Board; Order Approving Proposed Amendment to Board Rules Relating to Inspections

May 28, 2009.

I. Introduction

On December 9, 2008, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule amendment (PCAOB–2008–06) pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act'') relating to the Board's rules governing inspections of registered public accounting firms. Notice of the proposed rule amendment was published in the **Federal Register** on April 24, 2009.[1] The Commission received four comment letters relating to the proposed rule amendment. For the reasons discussed below, the Commission is granting approval of the proposed rule amendment.

II. Description

On December 9, 2008, the PCAOB submitted to the Commission a proposed amendment to its inspection rules to adjust the inspection frequency requirements for certain non-U.S. registered public accounting firms. The proposed amendment would add paragraph (f) to existing Rule 4003 to provide that, with respect to any foreign registered public accounting firm that under the Board's inspection rules had a 2008 deadline for the first Board inspection, such deadline would be extended to 2009. Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), the Commission published the proposed amendment for public comment on April 20, 2009.

III. Discussion

Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers. Section 104(b)(1)(B) of the Act requires the PCAOB to conduct an inspection, at least once every three years, of each registered firm that regularly provides audit reports for 100 or fewer issuers, and Section 104(b)(2) of the Act authorizes the PCAOB to adopt rules adjusting that frequency.

The Commission received four comment letters relating to the proposed rule amendment. Three of the comments came from registered public accounting firms[2] and one came from a foreign regulator.[3] The letters from the accounting firms supported adoption of the amendment, although one questioned whether a one-year delay provided sufficient time for resolution of the issues related to the affected inspections. While not specifically related to the proposed amendment, all of the commenters also reiterated views

[1] *See* SEC Release No. 34–59792 (April 20, 2009); 74 FR 18753 (April 24, 2009).

[2] Deloitte Touche Tohmatsu; PricewaterhouseCoopers LLP; and Ernst & Young LLP.

[3] China Securities Regulatory Commission.

on foreign inspections more generally, which they indicated they also had expressed to the PCAOB in response to a Board request for comment issued concurrently with the issuance of the proposed amendment. We are mindful of these and other views regarding the implications of foreign inspections. We will continue to work with the PCAOB on these issues and encourage the PCAOB to consider these comments in connection with any future action the Board considers, including the impact of a further delay of the inspections affected by this proposed amendment.

The proposed amendment itself does not limit the PCAOB's authority to conduct inspections at any time and does not affect registered firms' obligations under the Act. Nor does it, nor could it, resolve the broader views expressed by the commenters. However, as the Board explained, the adjustment would provide additional time to continue discussions on outstanding matters and work towards cooperation and coordination with authorities in all relevant jurisdictions. The adjustment will accomplish this while delaying a relatively small number of inspections.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendment to the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule amendment (File No. PCAOB–2008–06) be and hereby is approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–12744 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59983; File No. SR–BX–2009–027]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Effective Date of the Rule Governing Exchange's Directed Order Process on the Boston Options Exchange

May 27, 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 May 21, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effective date of the amended rule governing the Exchange's Directed Order Process on the Boston Options Exchange (''BOX'') from May 29, 2009 to November 30, 2009. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

On March 14, 2006, the Exchange proposed an amendment to the BOX Rules governing the Directed Order[5] process on BOX.[6] The Rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant (''EP'') the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, (''Pilot Program'') while the Securities and Exchange Commission (''Commission'') considered a corresponding Exchange proposal[7] to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,[8] while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006, January 16, 2007, July 2, 2007, January 18, 2008 and January 26, 2009 the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on BOX from September 30, 2006 until January 31, 2007,[9] from January 31, 2007 until July 31, 2007,[10] from July 31, 2007 until January 31, 2008,[11] from January 31, 2008 until January 31, 2009,[12] and from January

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[6] *See* Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14).

[7] *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[8] *See* Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR–BSE–2006–29).

[9] *See* Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR–BSE–2006–38).

[10] *See* Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR–BSE–2007–01).

[11] *See* Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR–BSE–2007–31).

[12] *See* Securities Exchange Act Release No. 57195 (January 24, 2008), 73 FR 5610 (January 30, 2008) (SR–BSE–2008–04).

31, 2009 until May 29, 2009,[13] respectively, while the Commission considered the corresponding Exchange proposal to amend the BOX Rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from May 29, 2009 to November 30, 2009.[14] In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend the BOX Rules before November 30, 2009, the amended rule governing the Directed Order process on the BOX will cease to be effective at the time of that decision.

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from May 29, 2009 to November 30, 2009. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the 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)[17] of the Act and Rule 19b–4(f)(6) thereunder.[18] As required under Rule 19b–4(f)(6)(iii),[19] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[22] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.[23] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–027. 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

[13] *See* Securities Exchange Act Release No. 59311 (January 28, 2009), 74 FR 6071 (February 4, 2009) (SR–BX–2009–007).

[14] In the event that the issue of anonymity in the Directed Order process is not resolved by November 30, 2009 the Exchange will consider whether to submit another filing under Rule 19b–4(f)(6) extending this rule and system process.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *Id.*

[23] 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).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–027 and should be submitted on or before June 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12718 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59981; File No. SR–CBOE–2009–024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Related to Its Obvious Error Rules

May 27, 2009.

I. Introduction

On April 8, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') 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 amend CBOE Rules 6.25 and 24.16 (collectively, the ''Obvious Error Rules'') pertaining to the nullification and adjustment of options transactions. The proposed rule change was published for comment in the **Federal Register** on April 24, 2009.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Discussion

A. Merging Rules

The Exchange proposes to merge Rule 24.16 (which currently relates to only index, ETF and HOLDRS options) into Rule 6.25 (which currently relates to only equity options) to form a single obvious error rule.

B. Obvious Pricing Errors

1. Definition of Theoretical Price

The Exchange proposes to amend Rule 6.25's definition of ''Theoretical Price'' to base it on the national best bid or offer (''NBBO'') instead of the market with the most liquidity. Using the NBBO to define Theoretical Price is similar to how ''fair market value'' is currently defined for obvious pricing errors under Rule 24.16. The Exchange also proposes to permit Trading Officials to establish the Theoretical Price when the NBBO for the affected series, just prior to the erroneous transaction, is at least two times the permitted bid/ask differential under subparagraph (b)(iv)(A) of Rule 8.7.

2. Non-CBOE Market Makers

The Exchange proposes to provide for the adjustment of Obvious Pricing Error transactions involving non-CBOE Market-Makers, provided the adjusted price does not violate the non-CBOE Market-Maker's limit price.

3. ROS and HOSS Rotations

The Exchange proposes to revise the Obvious Pricing Error provision as it pertains to transactions occurring as part of the Rule 6.2A, *Rapid Opening System* (''ROS''), or Rule 6.2B, *Hybrid Opening System (''HOSS''),* rotations. With respect to regular ROS and HOSS rotations, the Exchange is proposing to add a condition that the option contract quantity subject to nullification or adjustment would not exceed the size of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). Any nullifications or adjustments would occur on a pro rata basis considering the overall size of the ROS or HOSS opening trade. With respect to HOSS rotations in index options series being used to calculate the final settlement price of a volatility index, the Exchange proposes to carryover a condition from Rule 24.16 that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) must be for at least the size of the HOSS opening transaction(s). If the size of the quote is less than the size of the opening transaction(s), then the Obvious Pricing Error provision shall not apply.

4. Non-Broker-Dealer Customer Orders Entered Before the Opening Rotation

The Exchange proposes to extend the expanded notification period applicable to transactions during opening rotations involving non-broker-dealer Customers to include certain orders entered before the opening that are executed immediately following the opening rotation. Specifically, Rule 6.25 currently requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. However, an expanded notification period is available for transactions during option rotation occurring as part of ROS or HOSS where at least one party to the transaction is a non-broker-dealer Customer. The Exchange proposes to make the expanded notification period applicable to transactions involving non-broker-dealer Customers' marketable orders that are entered before the opening rotation and that are executed as part of the Hybrid Agency Liaison (''HAL'') on the opening process and certain transactions involving non-broker-dealer Customers' complex orders that are entered before the opening rotation and that are executed immediately following the opening rotation through the Exchange's electronic Complex Order Book.

5. Binary Options

The Exchange proposes to provide that any price adjustment for a binary option series (including any adjustment penalty that may be applicable to transactions between CBOE Market-Makers) shall not exceed the applicable exercise settlement amount for the binary option.

C. Catastrophic Pricing Errors

The Exchange proposes to amend Rule 6.25 to add criteria for identifying ''Catastrophic Errors'' and making adjustments when Catastrophic Errors occur, as well as a streamlined procedure for reviewing actions taken in these extreme circumstances. Under Rule 6.25, trades that result from an Obvious Pricing Error may be adjusted or busted according to objective standards. Under the Rule, whether an Obvious Pricing error has occurred is determined by comparing the execution price to the Theoretical Price of the option. The rule requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. Trades that qualify for adjustment or are nullified under the Rule are compared to a price that matches the theoretical price plus or minus an adjustment value for transactions between CBOE Market Makers, which is $0.15 if the Theoretical Value is under $3 and $0.30 if the Theoretical Value is at or above $3. By adjusting trades above or below the Theoretical Price, the rule assesses a ''penalty'' in that the adjustment price is not as favorable as the amount the party making the error

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 59793 (April 20, 2009), 74 FR 18762.

would have received had it not made the error.

In some extreme situations, members may not be aware of errors that result in very large losses within the time periods required under the Rule. In this type of extreme situation, CBOE proposes to give members more time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce the corresponding large windfalls. In such cases, the proposal sets forth the minimum amount by which the options execution price must differ from the Theoretical Price for a Catastrophic Error to occur. The proposal also sets forth the adjustment value to be used by CBOE when it makes a Catastrophic Error determination. A Catastrophic Error would be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the option by an amount equal to at least the ''Minimum Amount,'' and the adjustment would be made plus or minus the ''Adjustment Value.'' At all price levels, the Minimum Amount and the Adjustment Value for Catastrophic Errors would be significantly higher than for Obvious Pricing Errors, which the Exchange believes would limit the application of the proposed rule to situations where the losses are very large.

Under the new provision, generally, members will have until 7:30 a.m. Central Time on the day following the trade to notify Trading Officials or designated personnel in the control room of a potential Catastrophic Error. Once notification has been received within the required time period, a panel comprised of at least one member of the Exchange's staff designated to perform Catastrophic Error Panel functions and four Exchange members (the ''Panel'') will review the claim. Fifty percent of the number of Exchange members on the Panel must be directly engaged in market making activity and fifty percent of the number of Exchange members on the Panel must act in the capacity of a floor broker. In the event the Panel determines that a Catastrophic Error did not occur, the member that initiated the review will be charged $5,000.

D. Erroneous Prints & Quotes in the Underlying

1. Adjustments

For consistency, the Exchange proposes to amend Rule 6.25 to allow for adjustments and nullifications of erroneous prints in the underlying (currently the provision calls for nullifications only).

2. Average Quote Width

The Exchange is also proposing to revise the provisions to determine the ''average quote width'' in the underlying by adding the quote widths of sample quotations at regular 15-second intervals during the two minutes preceding and following an erroneous transaction.

3. Designation of Underlying

The Exchange proposes to modify the erroneous trade and quote provisions to allow the Exchange to designate the applicable underlying security(ies) or related instruments for any option. Under the revised rule, the Exchange would identify particular underlying or, with respect to ETF(s), HOLDRS(s), and index options, related instrument(s) that would be used to determine an erroneous print or quote and would also identify the relevant market(s) trading the underlying or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The underlying or related instrument(s) and relevant market(s) will be designated by the Exchange and announced via Regulatory Circular. For a particular ETF, HOLDRS, index value and/or futures product to qualify for consideration as a ''related instrument,'' the revised rule requires that: (i) The option class and related instrument must be derived from or designed to track the same underlying index; or (ii) in the case of S&P 100-related options, the options class and related instrument must be derived from or designed to track the S&P 100 Index or the S&P 500 Index.

E. Trading Officials

The Exchange is proposing to change the definition of the term Trading Officials to mean three Exchange officials designated to perform Trading Official functions, at least one of which is an Exchange member designated as a Floor Official and at least one of which is a member of the Exchange's staff designated to perform Trading Official functions. The term is currently defined to mean two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions.

F. Obvious Error Panel

The Exchange is proposing to change a reference from ''non-DPM floor brokers'' to simply ''floor brokers'' in the composition requirements for Obvious Error Panels, which review certain determinations rendered by Trading Officials and the senior official in the Exchange's control room under Rule 6.25(b).

III. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an obvious error may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In approving proposals relating to adjustment or nullification of trades involving obvious errors, the Commission has stated that the determination of whether an obvious error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.[7] The Commission believes that the rule changes proposed by the CBOE are clear, specific, and objective.

Merging Rules

Merging CBOE Rules 6.25 and 24.16 improves clarity and efficiency by harmonizing the obvious error provision across all equity option transactions into one rule.

Obvious Pricing Errors

The modifications to CBOE's pricing error provision clarify the objective standards that are to be applied in determining whether an obvious error has occurred. Utilizing the NBBO as a reference point for theoretical price is in

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) and 58460 (September 4, 2008), 73 FR 53060 (September 12, 2008) (approving revisions to CBOE's Obvious Error Rules).

conformity with other obvious error provisions previously approved by the Commission.[8] The amendments relating to non-CBOE market-makers and ROS and HOSS rotations also conform CBOE's rule to rules already approved by the Commission.[9] The Commission believes that expanding the applicability of the extended customer obvious error notification provision for transactions involving certain non-broker-dealer customer orders that are entered before the opening rotation and that are executed as part of HAL on the opening process or that are executed immediately following the opening rotation through the Complex Order Book would give those customers a reasonable amount of time to discover an obvious error transaction and to request an obvious error review. The Commission believes that limiting the price adjustment for binary options is reasonable and objective in light of the payout structure of those options.

Catastrophic Error

The Commission believes that the proposed catastrophic error provision balances the need for certainty of trades and mitigating large losses due to errors in extreme circumstances through clear and objective procedures.[10] Moreover, the Commission believes that the proposed Catastrophic Error Panel, the streamlined review process, and the proposed fee for unsuccessful claims are appropriate to accomplish this balance.

Erroneous Prints and Quotes in the Underlying

The Commission deems that the provision allowing CBOE to designate the applicable underlying securities (or related instruments) and relevant markets for any option is beneficial to members in determining whether an erroneous print or quote has occurred. The provision takes into account the fact that members often base their options prices on various products in various markets and that erroneous options transactions may be a result of erroneous prints or quotes in markets other than the primary market for an underlying security. The changes to the calculation of average quote width and allowing adjustments in addition to nullifications are appropriate and consistent with other rules previously approved by the Commission.[11]

Trading Officials and Obvious Error Panel

The Commission believes that the change to the definition of ''Trading Officials'' is appropriate and does not negatively impact the objectiveness or fairness of CBOE's obvious error provisions. Lastly, the Commission notes that deleting ''non-DPM'' from the definition of floor brokers is a non-substantive technical change and is appropriate.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2009–024) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12717 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

[8] *See, e.g.,* Securities Exchange Act Release No. 57712 (April 24, 2008), 73 FR 24100 (May 1, 2008) (approving revisions to the Philadelphia Stock Exchange's Obvious Error Rule).

[9] *See, e.g.,* CBOE Rule 24.16.

[10] *See* Securities Exchange Act Release No. 57398 (February 28, 2008), 73 FR 12240 (March 6, 2008).

[11] *See supra,* note 8, and Rule 6.25(a)(5) (relating to an erroneous quote in the underlying).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59975; File No. SR–NYSEALTR–2009–26]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Changing Certain NYSE Amex Equities Rules To Conform Them With Changes to Corresponding Rules Filed by the New York Stock Exchange LLC

May 26, 2009.

I. Introduction

On March 9, 2009, the NYSE Alternext LLC (n/k/a NYSE Amex LLC) (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make changes to certain NYSE Amex Equities rules, to be effective retroactively to December 15, 2008, to conform them with changes to corresponding rules filed by the New York Stock Exchange LLC (''NYSE'') on March 9, 2009,[3] and approved by the Commission on May 21, 2009.[4] NYSE had proposed the rule changes described in the NYSE Notice to harmonize NYSE rules with corresponding rules that were filed by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and approved by the Commission or were effective upon filing with the Commission.[5] On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The proposed rule change was published in the **Federal Register** on April 6, 2009.[7] The Commission received no comments on the proposal. On May 11, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.[8] This order provides notice of the proposed rule change, as modified by Amendment No. 2, and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (''Merger'').[9] 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 Amex US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15563 (''NYSE Notice'').

[4] *See* Securities Exchange Act Release No. 59965 (May 21, 2009) (''NYSE Order'').

[5] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057).

[6] Amendment No. 1 to SR–NYSEALTR–2009–26 superseded and replaced the original filing in its entirety.

[7] *See* Securities Exchange Act Release No. 59656 (March 30, 2009), 74 FR 15540 (''Notice'').

[8] Amendment No. 2 to SR–NYSEALTR–2009–26 clarified certain points set forth in the purpose section of Amendment No. 1 to SR–NYSEALTR–2009–026 relating to certain NYSE Amex Equities rules.

[9] *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).

[10] 15 U.S.C. 78f.

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, to trading systems and facilities located at 11 Wall Street, New York, New York (''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[11]

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply those rules to the Exchange as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[12] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform them with rule changes to corresponding NYSE Rules filed by the NYSE.

As noted above, the Exchange proposes to change certain NYSE Amex Equities Rules to conform them with changes to corresponding NYSE Rules that were described in the NYSE Notice.[13] On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc., the regulatory subsidiary of the NYSE, consolidated their member firm regulation operations into FINRA. In connection with that consolidation, FINRA is in the process of establishing a consolidated FINRA rulebook (''Consolidated FINRA Rulebook'') [14] that will harmonize NASD rules and certain NYSE rules related to member firm regulation.[15] All of these rules will be identified as ''FINRA Rules'' when the rule consolidation process is completed.

To reduce regulatory duplication, the Exchange proposes to conform several NYSE Amex Equities rules with changes to corresponding rules that were filed by the NYSE [16] and recently approved by the Commission.[17] The Notice provides a more detailed description of the Exchange's proposed rule changes.[18]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2009–026 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–2009–26. 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–2009–26 and should be submitted on or before June 23, 2009.

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the requirements of Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NYSE Amex is deleting certain rules pertaining to: (1) Compensation or gratuities to employees of others; (2) business conduct, trading against firm

[11] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation).

[12] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

[13] *See* NYSE Notice, *supra* note 3.

[14] The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE (''FINRA Incorporated NYSE Rules'') (together, referred to as the ''Transitional Rulebook''), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members.

[15] Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and NASD entered into an agreement (the ''Rule 17d–2 Agreement'') to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for specified NYSE rules (the ''Common Rules''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR–NASD–2007–054). Paragraph 2(b) of the Rule 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[16] *See* NYSE Notice, *supra* note 3.

[17] *See* NYSE Order, *supra* note 4.

[18] *See* Notice, *supra* note 7.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

recommendations, and private sales; (3) excessive trading by members, excessive trading in discretionary accounts, successive transactions by members, manipulative operations, reopening contracts, and loans for accounts of non-members; (4) disciplinary proceedings concerning conduct that is inconsistent with just and equitable principles of trade; (5) reporting of certain information concerning short sales and proprietary transactions; (6) reporting and certification of member or member organization's supervision and compliance efforts; (7) formation and approval or merger organizations; (8) reporting of short positions; (9) notification requirements for listed securities; and (10) disclosure and monitoring of non-managed fee based accounts. In place of the deleted rules and interpretations, NYSE Amex proposes to adopt rules that conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based.[22]

The Commission believes that the proposed rule change, as amended, is appropriate and would provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules, thereby resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. With respect to the Exchange's proposal to delete NYSE Amex Equities Rule 350 and to adopt NYSE Amex Equities Rule 3220, (relating to influencing or rewarding employees of others), the Commission notes that NYSE Amex has stated that, immediately upon Commission approval of new NYSE Amex Equities Rule 3220, it will issue an Information Memorandum to its members and member organizations including NYSE Amex-only members and those members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of NYSE Amex Equities Rule 3220, and that such members and member organizations are required to regulate their conduct according to Rule 3220 and the interpretive guidance related to FINRA Rule 3220.[23] Accordingly, the Commission believes that the proposed rule change, as amended, is consistent with the requirements of the Act.

The Commission also finds good cause for approving the proposed rule change as modified by Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 simply clarifies certain points relating to proposed changes to NYSE Amex Equities Rules. Because Amendment No. 2 does not significantly alter the proposed rule change, which was subject to a full notice and comment period, the Commission finds that it is in the public interest to approve the proposed rule change, as modified by Amendment No. 2, without delay to expedite implementation. Accordingly, the Commission finds that there is good cause, consistent with and in furtherance of the objectives of Sections 6[24] and 19(b)(2)[25] of the Exchange Act, to approve Amendment No. 2 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSEALTR–2009–26) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12714 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

[22] *See* NYSE Order, *supra* note 4.

[23] Telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, May 21, 2009.

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59978; File No. SR–NYSEArca–2009–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules Related to Doing a Public Business in Options

May 27, 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 May 7, 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 and II below, which Items have been substantially prepared by the Exchange.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 9.18—Doing a Public Business in Options. The text of the proposed rule change 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 9.18(f) to provide that the market on which an options transaction is executed need not be disclosed on a written confirmation furnished to a customer of an Options Trading Permit Holder (''OTP Holder'') or Options Trading Permit Firm (''OTP Firm'').[5]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] The Exchange and Commission staff agreed to several clarifying changes in text of Items I, II, and III during a telephone conversation between Andrew Stevens, Chief Counsel U.S. Equities and Derivatives, Exchange, and Darren Vieira, Attorney Advisor, Division of Trading and Markets, Commission on May 21, 2008.

[5] The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council (''OSRC''), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the ''Plan''). *See* Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). The Plan is not a National Market System (''NMS'') plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d–2 under the Act. 17 CFR 240.17d–2. As a result of the introduction of multiply listed options and the introduction of the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (''Options Linkage Plan''), the contracts in a customer options order could be executed on more than one options

Continued

Pursuant to proposed Rule 9.18(f), the OTP Holders and OTP Firms would continue to be required to furnish a written confirmation that contains a description of each transaction in the option contracts which shows: The type of option; the underlying security (*e.g.*, stock or exchange traded fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; and whether the transaction was effected on a principal or agency basis.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the executing firm to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal would clarify that written confirmations furnished to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the American Stock Exchange LLC, the Financial Industry Regulatory Authority, Inc., the Chicago Board Options Exchange, the NASDAQ OMX PHLX, Inc., the Boston Stock Exchange, Inc., and the International Securities Exchange, LLC and approved by the Commission.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, this proposed rule change would promote consistency between NYSE Arca and other self-regulatory organization rules and clarify the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change is based on rule changes previously approved by the Commission and the proposed rule change does not present any novel issues, the Commission believes that waiving the 30-day operative delay period to permit the proposed rule change to be implemented immediately is consistent with the protection of investors and the public interest. The proposed rule will promote consistency between the rules of the NYSE Arca and other self-regulatory organizations. Thus, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.[15]

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:

exchange, and the significance of the options exchange, or exchanges, that execute a particular options transaction has diminished significantly. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Furthermore, the OSRC believes that in light of best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange, or exchanges, on which the options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry wide.

[6] *See* Securities Exchange Act Release No. 58814 (October 20, 2008), 73 FR 63527 (October 24, 2008) (approval order); Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (approval order); Securities Exchange Act Release No. 58980 (November 19, 2008), 73 FR 72091 (November 26, 2008) (approval order); Securities Exchange Act Release No. 59166 (December 29, 2008), 74 FR 328 (January 5, 2009) (approval order); Securities Exchange Act Release No. 59434 (February 23, 2009), 74 FR 9012 (February 27, 2009) (approval order); and Securities Exchange Act Release No. 59806 (April 21, 2009), 74 FR 19254 (April 28, 2009) (approval order).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative date of the proposal, the Commission has considered the proposed Rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2009–41 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.

All submissions should refer to File Number SR–NYSEArca–2009–41. 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 20549–1090 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 NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–41 and should be submitted on or before June 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12715 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59974; File No. SR–NSX–2009–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule Issued Pursuant to Exchange Rule 16.1(c) in Order to Include Securities Priced at Less Than One Dollar in the Calculation of Volume Thresholds Used To Determine Rebates Payable for Displayed Order Liquidity Adding Tape A and C Securities Executed at One Dollar or Above

May 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2009, National Stock Exchange, Inc. (''NSX'' 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 Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(c) in order to include securities priced at less than one dollar in the calculation of volume thresholds used to determine rebates payable for displayed order liquidity adding Tape A and C securities executed at one dollar or above.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule's calculation of ''Liquidity Adding Average Daily Volume'' (''Liquidity Adding ADV'') used to determine rebates payable for displayed orders of Tape A and C securities in the Automatic Execution Mode of order interaction (''AutoEx'') [3] (the ''AutoEx Displayed Order Liquidity Adding Tape A/C Rebate'') so as to include securities priced under one dollar for purposes of determining whether a volume tier has been achieved.

The AutoEx Displayed Order Liquidity Adding Tape A/C Rebate is currently $0.0026, $0.0027 or $0.0028 per share where an ETP Holder achieves Liquidity Adding ADV [4] of less than 25 million, less than 40 million and 40 million or more, respectively. Currently, securities priced under one dollar are excluded from the calculation of ''Liquidity Adding ADV''. The Proposed Rule Change would modify the definition of ''Liquidity Adding ADV'' with respect only to the tiers used in calculation of the AutoEx Displayed Order Liquidity Adding Tape A/C Rebate so as to include securities under one dollar in the calculation of whether the above referenced tiers are achieved. The Proposed Rule Change would not modify other calculations of average daily volume in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of Displayed Orders of sub-dollar Tape A and C securities in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] As set forth in the Explanatory Endnotes to the Fee Schedule, prior to implementation of the instant rule change, ''Liquidity Adding ADV'' means, with respect to an ETP Holder, ''the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred''. The proposed rule change would modify the foregoing definition by adding the following statement: ''Notwithstanding the foregoing, for purposes of determining whether the volume tier thresholds are achieved in AutoEx with respect to rebates applicable to displayed orders that add liquidity for Tape A and C securities, securities priced under one dollar will be included''.

AutoEx for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide Tape A and C Displayed Orders in AutoEx, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to utilize the proposed calculation effective upon filing of this proposed rule as it performs the calculations to determine the May, 2009 AutoEx Displayed Order Liquidity Adding Tape A/C Rebates.[5] Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–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–NSX–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 the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2009–03 and should be submitted on or before June 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12713 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

[5] The Exchange has determined that its application of the proposed modification of the calculation of average daily volume as it applies to the entire current calendar month could only benefit ETP Holders by serving to increase the amount of their AutoEx Displayed Order Liquidity Adding Tape A/C Rebate for such month. In addition, the Exchange has determined that such application will not adversely impact the general operating revenues of the Exchange.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4 [sic].

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59979; File No. SR–NYSE–2009–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees Charged for the Floor Member Continuing Education Program for Qualified Floor Members Pursuant to NYSE Rule 103A

May 27, 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 May 22, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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, effective immediately, the fees charged for the Floor Member Continuing Education Program for qualified Floor members pursuant to NYSE Rule 103A, from a fixed flat $50 fee per training module, to an $80 flat fee per training module. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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*

As required by NYSE Rule 103A, the Exchange provides Floor members with a mandatory continuing education program, known as the Floor Member Continuing Education Program (''FMCE Program''). The Exchange proposes to amend, effective immediately, the fees charged for the Floor Member Continuing Education Program for qualified Floor members. Currently, members pay a fee of $50 per training module. The Exchange is proposing to increase the fee to $80 per training module for 2009.

Members must complete all Exchange-mandated FMCE programs. As originally offered, the program consisted of live and video-taped lectures. Subsequently, the Exchange updated the program and began delivering FMCE content in a computerized learning laboratory, for which members were assessed a flat per-session fee of $100. Beginning in March 2008, the Exchange began offering the FMCE Program via a web-based interactive program that members can access from an Internet-capable computer. To reflect the delivery method of the revised, Web-based FMCE Program, starting in October 2007, the Exchange changed the fee structure from a per-session fee to a flat fee of $50 for each training module offered. For this flat fee, members are able to access the FMCE Program during their own time and from their own computers under proper compliance supervision. Members are also able to stop and start a training module at any point and return to a module once completed without any additional charge.

Based upon experience, the revenues generated from the $50 flat fee for each training module offered are insufficient to cover fully the costs associated with developing and delivering these modules. For that reason, the Exchange is proposing to increase the fee in order to achieve the goal of cost recovery for the program. The Exchange has evaluated the program's costs for 2009 and is proposing to assess a fee of $80 for modules delivered in 2009. The new fee will not be retroactive and will be applied following the date of this filing.

Beginning in 2010, the Exchange will review the fee annually to ensure that the fee continues to accurately reflect the Exchange's development and delivery costs. Any revenues collected in a given year that exceed that year's actual development and delivery costs will be credited to the projected development and delivery costs for the succeeding year. Similarly, any deficit may be carried over to the next year for purposes of assessing the fee. If the Exchange determines that further fee changes are necessary, we will submit appropriate filings with the Commission.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [4] of the Securities Exchange Act of 1934 (the ''Act'') [5] in general and Section 6(b)(4) of the Act [6] in particular, in that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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–NYSE–2009–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–52. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

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 Section, 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 the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–52 and should be submitted on or before June 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12716 Filed 6–1–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6643]

60-Day Notice of Proposed Information Collection: Request for Reconsideration of Proviso(s); OMB Control Number 1405–0172.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Request for Reconsideration of Proviso(s) Determination.

OMB Control Number: 1405–0172.

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Political Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

Form Number: None.

Respondents: Business organizations.

Estimated Number of Respondents: 120 (total).

Estimated Number of Responses: 350 (per year).

Average Hours Per Response: 1 hour.

Total Estimated Burden: 350 hours (per year).

Frequency: On Occasion.

Obligation to Respond: Mandatory.

DATES: The Department will accept comments from the public up to 60 days from August 3, 2009.

ADDRESSES: Comments and questions should be directed to Mary F. Sweeney, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

E-mail: Sweeneymf@state.gov.

Mail: Mary F. Sweeney, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

Fax: 202–261–8199.

You must include the information collection title in the subject line of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including a copy of the supporting document, to Mary F. Sweeney, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2865, or via e-mail at *sweeneymf@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

Evaluate whether the proposed collection of information is necessary for the proper performance of 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: To request a change in the proviso(s) placed on an export license, the applicant submits a letter requesting reconsideration of a particular proviso(s).

Methodology: This information collection is an exchange of letters and may be sent to the Directorate of Defense Controls via mail.

Dated: May 22, 2009.

Robert S. Kovac,

Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. E9–12660 Filed 6–1–09; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 6649]

Overseas Security Advisory Council (Osac) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 16 at the U.S. Department of State, Arlington, Virginia and on June 17 at the U.S. Department of Homeland Security, Washington, DC. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, *phone:* 571–345–2214.

Dated: May 4, 2009.

Gregory B. Starr,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E9–12825 Filed 6–1–09; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 6648]

Review of Foreign Terrorist Organization Designation for Kahane Chai, Also Known as KACH, and Other Aliases

Pursuant to section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189 (a)(4)(C)), the Department of State is undertaking a review of the designation of the above-

named group as a Foreign Terrorist Organization. Representatives and members of the above-named group may provide the Department of State with a written statement or other documentary materials for consideration as part of the review process and inclusion in the administrative record. Such materials must be submitted by June 12, 2009 to: The Coordinator for Counterterrorism, United States Department of State, 2201 C Street, NW., Washington, DC 20520.

This notice shall be published in the **Federal Register**.

Dated: May 13, 2009.

Ronald L. Schlicher,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. E9–12821 Filed 6–1–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0061]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOANE VICTORY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0061 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 2, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOANE VICTORY is:

Intended Use: ''Daytime & Sunset sightseeing cruises in the San Juan Islands of Washington State.''

Geographic Region: ''Washington State.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: May 20, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–12609 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 24, 2009 [Volume 74, No. 55, Page 12455].

DATES: Comments must be submitted on or before (insert 30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–303, 1200 New Jersey Avenue, SE., Washington, DC 20590. The telephone number for Mr. Toth is (202) 366–5378.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Automotive Sampling System (NASS).

OMB Number: 2127–0021.

Type of Request: Continuation.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity

motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Affected Public: Passenger Motor Vehicle Operators.

Estimated Total Annual Burden: 5,807 hours.

Number of Respondents: 13,500.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Marilena Amoni,

Associate Administrator for National Center for Statistics and Analysis.

[FR Doc. E9–12749 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0035]

Agency Information Collection Activities; New Information Collection Request: Annual Commercial Motor Vehicle Driver Survey: Work and Compensation

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this new information collection is to acquire general information regarding the commercial motor vehicle (CMV) driving population and specific information on driver work history, work scheduling, and compensation. This information is needed in many different types of analyses conducted by the FMCSA and would benefit the agency in understanding the impacts of proposed rules and the improvement of its safety programs. On December 12, 2008, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. One comment was received.

DATES: Please send your comments by July 2, 2009. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2008–0035. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Mindy Shalaby, Economist, Analysis Division, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. *Telephone:* (202) 493–0304; e-mail *Mindy.Shalaby@dot.gov.* Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Michelle Yeh, Engineering Psychologist, Human Factors Division, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02124. Telephone: (617) 494–3459; e-mail *Michelle.Yeh@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Commercial Motor Vehicle Driver Survey: Work and Compensation.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection request.

Respondents: Commercial motor vehicle drivers.

Estimated Number of Respondents: 576 commercial motor vehicle drivers.

Estimated Time per Response: 15 minutes per response.

Expiration Date: N/A.

Frequency of Response: Once.

Estimated Total Annual Burden: 144 hours [576 respondents × 15 minutes/60 minutes per response = 144].

Background: The Federal Motor Carrier Safety Administration seeks to understand the commercial motor vehicle driving population. Driver-related factors are an important consideration in CMV crashes, but there is no comprehensive nationwide source of information describing the population of drivers operating CMVs in the United States (U.S.). Estimates of the number of commercial drivers and particular subsets of drivers (*e.g.,* local, short-haul, and long-haul) are needed and would benefit FMCSA in assessing the impacts of proposed rules and improvements needed in its safety programs. In particular, information on driver work history, work schedule, and compensation is needed in many different types of analyses conducted by FMCSA.

Driver work history addresses how long a CMV driver has been working in the industry, his/her level of experience, and his/her type of experience. These items include questions regarding driver tenure with his/her current employer and the number of past employers to provide information regarding the driver turnover rate. The agency would also collect information under these items about driver training to understand how drivers learned to operate their CMVs and the amount of training that is ongoing in the industry. The driver work schedule item examines the issue of how much drivers work and the activities in which they are engaged when they work (*e.g.,* driving time, loading time, waiting time). FMCSA is interested in understanding how drivers' work schedules are tracked (*e.g.,* with paper log books or Electronic On-Board Recorders (EOBRs)). Finally, driver compensation collects information on how much drivers earn and how they are paid (*e.g.,* salary, by hour, or by mile). This data will allow FMCSA to estimate an average wage rate, which can be used to understand the cost imposed on drivers by current and proposed regulations.

The goals of this survey are to acquire general demographic information regarding the commercial motor vehicle driving population, and specific information on driver work history, work scheduling, and compensation. Data for this project would be collected via driver interviews. The results of the information collection would be summarized in a report developed for the FMCSA and made available to the public.

On December 12, 2008, the FMCSA published a **Federal Register** notice on this same topic and provided 60 days for public comment (73 FR 75793). The Agency received one comment from the Owner-Operator Independent Drivers Association, INC (OOIDA) in response to the notice. OOIDA expressed support for the survey and provided several suggestions on how the survey questions and methodology for collecting the data could be improved. FMCSA will consider these suggestions during the implementation of the survey.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: May 26, 2009.

David C. Anewalt,

Acting Associate Administrator, Research and Information Technology.

[FR Doc. E9–12777 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–337 (Sub-No. 6X)]

Dakota, Minnesota & Eastern Railroad Corporation–Discontinuance of Trackage Rights Exemption–in Worth and Cerro Gordo Counties, IA, and Freeborn County, MN

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) [1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue overhead trackage rights over approximately 48.2 miles of Union Pacific Railroad Company (UP) rail lines extending from milepost 107.0 at Hartland, MN, to milepost 119.4 at Albert Lea, MN, and from milepost 251.6 at Albert Lea to milepost 192.8 at Mason City, IA, (the Hartland-Mason City Line), in Freeborn County, MN, and Worth and Cerro Gordo Counties, IA.[2] The line traverses United States Postal Service Zip Codes 56042, 56007, 56036, 50459, 50448, 50456 and 50401.

DM&E has certified that: (1) no local traffic has moved via its trackage rights over the line for at least 2 years; (2) any DM&E overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of DM&E rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 2, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by June 12, 2009.[4] Petitions to reopen must be filed by June 22, 2009, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to DM&E's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 26, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–12720 Filed 6–1–09; 8:45 am]

BILLING CODE 4915–01–P

[1] DM&E is a wholly owned, indirect subsidiary of Canadian Pacific Railway Company and is a Class II rail carrier.

[2] DM&E acquired these overhead trackage rights from UP's predecessor, the Chicago and North Western Transportation Company. *See Dakota, Minnesota & Eastern Railroad Corporation—Acquisition and Operation Exemption—Chicago and North Western Transportation,* Finance Docket No. 30889 (ICC served Sept. 8, 1986).

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before November 30, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Salvador Deocampo, District Engineer, Texas Division, FHWA, J.J. Pickle Federal Building 300 East 8th Street, Room 826, Austin, Texas 78701; phone number 512–536–5950; e-mail: *salvador.deocampo@fhwa.dot.gov.* FHWA Texas Division normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday. You may also contact Ms. Dianna Noble, P.E., Director Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside, Austin, Texas, 78704; phone number 512–416–2734; *e-mail: dnoble@dot.state.tx.us.* Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described

in the documented Environmental Assessments (EAs), issued in connection with the projects, and in other documents project records. The EAs, Findings of No Significant Impacts (FONSIs), and other project records for the listed projects are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above and can be viewed and downloaded from each project's Web site found below.

This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

I. *General:* National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351); Federal-Aid Highway Act (FAHA) (23 U.S.C. Section 109), Federal Aviation Administration . 49 USC Section 47107(a)(16).

II. *Air:* Clean Air Act (CAA), [42 U.S.C. 7401–7671(q)].

III. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. Section 303).

IV. *Wildlife:* Endangered Species Act (ESA) of 1973 (16 U.S.C. Sections 1531–1544 and Section 1536), Migratory Bird Treaty Act (MBTA) (16 U.S.C. Sections 703–712).

V. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. Section 470 (f) et seq.]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. Sections 470(aa)-11]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. Sections 469–469(c)].

VI. *Social and Economic:* Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. Section 2000(d)-2000(d)(1)].

VII. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. Sections 1251–1377 (Section 404, Section 401, Section 402, Section 319); Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. Sections 401–406.

VIII. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Government; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. *Project Location:* Interstate Highway (IH) 820 from IH 35W to State Highway (SH) SH 121/SH 183/SH 26 in the cities of Fort Worth, Haltom City and North Richland Hills in Tarrant County, Texas. Project Reference Number: TxDOT CSJ: 0008–14–058, 0008–14–059 and 0014–16–194.

Project Web site: *http://www.txdot.gov/project_information/projects/fort_worth/north_tarrant_express/default.htm*

Project Type: The project will include total reconstruction of the facility from a 4 lane freeway with discontinuous frontage roads and auxiliary lanes to a 10 lane (6 general purpose (free) lanes and 4 managed (toll) lanes) facility with discontinuous frontage roads and auxiliary lanes. Project Length: Approximately 6 miles. General Purpose: The project will improve mobility throughout the corridor to relieve existing traffic congestion, improve local traffic circulation and accommodate future travel demand. Final agency actions have been taken under: NEPA, FAHA, CAA, ESA, MBTA, Section 4(f), Civil Rights Act, Section 106, ARPA, AHPA, Section 404, Section 401, E.O.'s 11990, 11988, 12898, 11593, 13175 and 11514. NEPA document: EA with a FONSI issued December 08, 2008.

2. *Project Location:* DFW Connector—SH 121 from Business 114L (Northwest Highway) to International Parkway AND SH 121 from SH 360 to Farm-to-Market (FM) 2499 primarily within the cities of Grapevine and Southlake in Tarrant County and Dallas County, Texas. Project Reference Number: TxDOT CSJ: 0353–03–059, 0353–03–079, 0364–01–072, 0364–01–112, 0364–01–113 and 0364–01–115.

Project Web site: http://www.txdot.gov/project_information/projects/fort_worth/dfw_connector/default.htm

Project Type: The project will include six main lanes eastbound and seven main lanes westbound and the addition of two managed express lanes in each direction along approximately 4.5 miles of the corridor with improvements to SH 114 and SH 121 to tie to existing lanes on each end. Project Length: Approximately 14.4 miles. General Purpose: The project will improve mobility throughout the corridor to relieve existing traffic congestion, improve local and regional traffic circulation and accommodate future travel demand, improve access and safety and improve operational deficiencies. Final agency actions taken under: NEPA, FAHA, FAA, CAA, ESA, MBTA, Civil Rights Act,, Section 106, ARPA, AHPA, Section 404, Section 401, E.O.'s 11990, 11988, 12898, 11593, 13175 and 11514. NEPA document: EA with a FONSI issued April 23, 2009.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 USC 139(l)(1)

Issued on: May 27, 2009.

Salvador Deocampo,

District Engineer,

Austin Texas.

[FR Doc. E9–12745 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket Number PHMSA–2009–0139 (Notice No. 09–3)]

Hazardous Materials: Request for Comments on Issues or Problems Concerning International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA).

ACTION: Notice; request for comments.

SUMMARY: PHMSA and the U.S. Nuclear Regulatory Commission (NRC) are jointly seeking comments on issues or problems concerning requirements in the International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material (referred to as TS–R–1). The IAEA is considering revisions to the TS–R–1 regulations as part of its periodic two-year review cycle for a 2013 Edition.

DATES: Submit comments by June 15, 2009. Comments received after this date will be considered if it is practical to do so; however, we are only able to assure consideration for proposals received on or before this date.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2009–0139) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200

New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Boyle, Office of Hazardous Materials Technology, (202) 366–4545, Pipeline and Hazardous Materials Safety Administration.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The IAEA works with its Member States and multiple partners worldwide to promote safe, secure and peaceful nuclear technologies. The IAEA established and maintains an international standard, Regulations for the Safe Transport of Radioactive Material (TS–R–1), to promote the safe and secure transportation of radioactive material. The IAEA periodically reviews, and as deemed appropriate revises, its Regulations for the Safe Transport of Radioactive Material to reflect new information and accumulated experience. The DOT is the U.S. competent authority before the IAEA for radioactive material transportation matters. The NRC provides technical support to the DOT in this regard, particularly with regard to Type B and fissile transportation packages.

The IAEA recently initiated a review cycle for its regulations. To assure opportunity for public participation in the international regulatory development process, the DOT and the NRC are soliciting comments and information concerning issues or problems with the IAEA Regulations.

The focus of this solicitation is to identify issues or problems with the 2009 of TS–R–1. Although IAEA has not yet published the 2009 Edition of TS–R–1, a draft version suitable for this review process is available on *http://www.regulations.gov* (use the search tool to locate the docket number for this notice). The IAEA has already identified a number of issues with that draft; a table showing draft proposed changes to the 2009 Edition is also available through this docket at *http://www.regulations.gov.*

It would be helpful to recommend potential changes or solutions to resolve any identified issues or problems. This information will assist the DOT and the NRC to consider the full range of views and alternatives as the agencies develop the proposed issues the United States will submit to the IAEA.

II. Public Participation

Proposals must be submitted in writing (electronic file in Microsoft Word format preferred).

The DOT and the NRC will review the proposed issues and identified problems. Proposed issues and identified problems from all Member States and International Organizations will be initially considered at an IAEA Transport Safety Standards Committee (TRANSSC) Meeting to be convened by IAEA on October 5–9, 2009, in Vienna, Austria. Prior to that meeting, the DOT and the NRC will consider convening a public meeting to discuss the U.S. proposals submitted to the IAEA.

Issued in Washington, DC, on May 28, 2009.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–12778 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0121]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before July 2, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0121 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

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

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

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200

New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 23 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Daniel F. Albers

Mr. Albers, age 40, has complete loss of vision due to a traumatic injury sustained in 1996. The visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''In my medical opinion, Mr. Albers has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Albers reported that he has driven straight trucks for 18 years, accumulating 675,000 miles, and tractor-trailer combinations for 4 years, accumulating 100,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Brown

Mr. Brown, 62, has loss of vision in his left eye due to a traumatic injury sustained in 1955. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2008, his ophthalmologist noted, ''Mr. Brown has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brown reported that he has driven straight trucks for 11 years, accumulating 275,000 miles. He holds a Class C operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nicholas Cafaro

Mr. Cafaro, 60, has a prosthetic right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cafaro reported that he has driven straight trucks for 3 years, accumulating 168,000 miles, tractor-trailer combinations for 2 years, accumulating 110,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Barry G. Church

Mr. Church, 47, has had a macular scar in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/400. Following an examination in 2009, his optometrist noted, ''In my professional opinion, you have sufficient visual abilities to perform the driving tasks required to operate a commercial vehicle.'' Mr. Church reported that he has straight trucks for 7 years, accumulating 560,000 miles, and buses for 7 years, accumulating 140,000 miles. He holds a Class D operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David J. Comeaux

Mr. Comeaux, 48, has had a prosthetic left eye since childhood. The visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''Mr. Comeaux has been driving commercially for years and I do not see any new problems with his vision or the health of his right eye. I feel he is capable of performing driving tasks.'' Mr. Comeaux reported that he has driven straight trucks for 30 years, accumulating 450,000 miles, and tractor-trailer combinations for 30 years, accumulating 450,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy D. Courtney

Mr. Courtney, 48, has had parafoveal telangiectasia since 2001. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/30. Following an examination in 2009, his optometrist noted, ''It is my medical opinion that Mr. Courtney has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Courtney reported that he has driven straight trucks for 5 years, accumulating 200,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.5 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John J. Davis

Mr. Davis, 46, has optical nerve damage and retinal scarring in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity eye in his right eye is light perception, and in the left, 20/20. Following an examination in 2009, his optometrist noted, ''Mr. Davis' vision is sufficient for commercial license and has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Davis reported that he has driven straight trucks for 22 years, accumulating 121,000 miles. He holds a Class B CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert R. Donoho

Mr. Donoho, 58, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2009, his ophthalmologist noted, ''It is my opinion that he has vision sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Donoho reported that he has driven straight trucks for 9 years, accumulating 225,000 miles, and tractor-trailer combinations for 12 years, accumulating 870,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven L. Forristall

Mr. Forristall, 50, has complete loss of vision in his right eye due to a traumatic injury to his cornea sustained in 1980. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my opinion, Mr. Forristall has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Forristall reported that he has driven straight trucks for 31 years, accumulating 310,000 miles. He holds a Class B CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rocky D. Gysberg

Mr. Gysberg, 34, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/400. Following an examination in 2008, his optometrist noted, ''In my opinion, Rocky is visually capable of safely performing all required driving tasks required to operate a commercial motor vehicle.'' Mr. Gysberg reported that he has driven straight trucks for 2 months, accumulating 1000 miles, and tractor-trailer combinations for 8 years, accumulating 704,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy L. Huelster

Mr. Huelster, 38, has complete loss of vision in his left eye due to a traumatic injury sustained in 2001. The visual acuity in his right eye is 20/15. Following an examination in 2009, his ophthalmologist noted, ''I certify in my best medical opinion that Randy Huelster has sufficient vision to perform the driving tasks required to operate a commercial vehicle and any other vehicle of his choice.'' Mr. Huelster reported that he has driven straight trucks for 9 years, accumulating 585,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 18 mph.

Robert D. Kimmel

Mr. Kimmel, 46, has optic nerve atrophy in his right eye since childhood. The best corrected visual acuity in his right eye is 20/800 and in his left eye, 20/40. Following an examination in 2008, his optometrist noted, ''In my opinion, Mr. Kimmel is visually capable of operating a commercial vehicle at this time.'' Mr. Kimmel reported that he has driven straight trucks for 18 years, accumulating 450,000 miles, and tractor-trailer combinations for 18 years, accumulating 540,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles H. Lefew

Mr. Lefew, 37, has loss of vision in his left eye due to a traumatic injury sustained since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2009, his optometrist noted, ''Has sufficient functional vision required to operate commercial vehicle.'' Mr. Lefew reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 1 year, accumulating 30,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steve J. Morrison

Mr. Morrison, 43, has complete loss of vision due to a congenital cataract. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, ''It is my opinion that he does have sufficient visual abilities to continue to perform driving and operating a commercial vehicle in interstate commerce.'' Mr. Morrison reported that he has driven straight trucks for 26 years, accumulating 520,000 miles, and buses for 1 year, accumulating 1,500 miles. He holds a Class D operator's license from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph B. Peacock

Mr. Peacock, 30, has loss of vision in his left eye due to a traumatic injury sustained in 1995. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2009, his optometrist noted, ''Based on the eye examination, I feel that Mr. Peacock has more than adequate visual acuity and peripheral vision to safely operate a commercial vehicle at this time.'' Mr. Peacock reported that he has driven straight trucks for 8 years, accumulating 56,000 miles, and tractor-trailer combinations for 8 years, accumulating 4,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Pirl

Mr. Pirl, 45, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his ophthalmologist noted, ''In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pirl reported that he has driven tractor-trailer combinations for 17 years, accumulating 850,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frank Price, Jr.

Mr. Price, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my opinion, Mr. Price has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Price reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.6 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry L. Pruitt

Mr. Pruitt, 58, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2008, his optometrist noted, ''Mr. Pruitt's ocular hypertension or amblyopia does not affect his ability to operate a commercial vehicle.'' Mr. Pruitt reported that he has driven tractor-trailer combinations for 36 years, accumulating 4.5 million miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph E. Salter

Mr. Salter, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2009, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle and he should have no restrictions relating to his vision and driving.'' Mr. Salter reported that he has driven straight trucks for 6 years, accumulating 123,498 miles, and tractor-trailer combinations for 5½ years, 154,781 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles A. Terry

Mr. Terry, 61, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2009, his optometrist noted, ''I, Dr. Dubose do attest that in my medical opinion, Mr. Terry does have sufficient vision to

perform the necessary tasks that are required to operate a commercial vehicle.'' Mr. Terry reported that he has driven straight trucks for 3 years, accumulating 120,000 miles, and tractor-trailer combinations for 22 years, 1.6 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

Steven L. Thomas

Mr. Thomas, 51, has endophthalmitis in his left eye after cataract surgery in 1997. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/400. Following an examination in 2009, his optometrist noted, ''Mr. Thomas has sufficient vision to drive and operate a commercial vehicle.'' Mr. Thomas reported that he has driven straight trucks for 15 years, accumulating 150,000 miles, and tractor-trailer combinations for 22 years, accumulating 770,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel A. Wescott

Mr. Wescott, 56, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2009, his optometrist noted, ''The result of his vision exam does in my medical opinion qualify him to drive a commercial vehicle.'' Mr. Wescott reported that he has driven straight trucks for 10 years, accumulating 130,000 miles, and tractor-trailer combinations for 26 years, accumulating 780,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Zuza

Mr. Zuza, 62, has central retinal artery occlusion in his right eye. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/25. Following an examination in 2009, his ophthalmologist noted, ''In my medical opinion, Donald Zuza has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Zuza reported that he has driven straight trucks for 33 years, accumulating 330,000 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business July 2, 2009. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 26, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–12770 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 29 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 26, 2009. Comments must be received on or before July 2, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

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

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year.

If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 29 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 29 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Gary A. Barrett
Ivan L. Beal
Johnny A. Beutler
Daniel R. Brewer
Darryl D. Cassatt
Larry Chinn
Brett L. Condon
Albion C. Doe, Sr.
William K. Gullet
Daryl A. Jester
James P. Jones
Clyde H. Kitzan
Larry J. Lang
Spencer E. Leonard
Dennis D. Lesperance
John W. Locke
Herman G. Lovell
Ronald L. Maynard
Donald G. Meyer
William A. Moore, Jr.
Earl R. Neugebauer
Danny R. Pickelsimer
Richard S. Rehbein
Bernard E. Roche
David E. Sanders
David B. Speller
Lynn D. Veach
Harry S. Warren
Michael C. Wines

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 29 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 35772; 70 FR 33937; 72 FR 32705; 65 FR 20245; 65 FR 57230; 67 FR 57266; 65 FR 45817; 65 FR 77066; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 25878; 72 FR 28093; 66 FR 17743; 66 FR 33990; 68 FR 10301; 68 FR 19596; 70 FR 25878; 68 FR 19598; 68 FR 33570; 69 FR 64806; 70 FR 2705; 72 FR 1056; 70 FR 2701; 72 FR 16887; 70 FR 17504; 70 FR 30997; 71 FR 63379; 72 FR 1050; 72 FR 12666; 72 FR 25831; 72 FR 21313; 72 FR 32703). Each of these 29 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 2, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 29 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 22, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–12774 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–26653]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective July 2, 2009. Comments must be received on or before July 2, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–26653, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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

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

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FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 18 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures.

FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael W. Anderson	Michael J. McGregan
Michael R. Bradford	Willie E. Nichols
John J. Caricola, Jr.	John P. Perez
William P. Caulfield	Jeffrey W. Pike, Jr.
Denise M. Engle	Scott K. Richardson
Wade M. Hillmer	Kyle C. Shover
Michael W. Jensen	Charles H. Smith
Jorge Lopez	Robert G. Springer
Albert E. Marbut	Scott A. Taylor

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (72 FR 8417; 72 FR 36099). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 2, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 22, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–12765 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0122]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 35 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before July 2, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0122 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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

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

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 35 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Abdelhadi A. Abdelnabi

Mr. Abdelnabi, age 58, has had ITDM since 2001. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Abdelnabi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009

and certified that he has stable proliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

Dennis W. Athey, II

Mr. Athey, 33, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Athey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Barry A. Barber

Mr. Barber, 52, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Jeromy B. Birchard

Mr. Birchard, 37, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Birchard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Kevin J. Blue

Mr. Blue, 49, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blue meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a class B CDL from Illinois.

Lester B. Brazfield

Mr. Brazfield, 50, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brazfield meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Mexico.

Bradley M. Brown

Mr. Brown, 39, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Gary L. Brown

Mr. Brown, 68, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Robert F. Browne, III.

Mr. Browne, 31, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Browne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New Hampshire.

Robert F. Carter

Mr. Carter, 42, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Howard L. Cooksey

Mr. Cooksey, 51, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Cooksey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

William D. Cornwell, III

Mr. Cornwell, 54, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cornwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Brian P. Dionne

Mr. Dionne, 45, has had ITDM since 1978. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dionne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class C operator's license from New Hampshire.

Richard C. Dunn

Mr. Dunn, 48, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dunn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Connecticut.

Donald K. Ennis

Mr. Ennis, 34, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ennis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Dennis Graves

Mr. Graves 64, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Graves meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Michael T. Harris

Mr. Harris, 26, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Daniel H. Henson

Mr. Henson, 59, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Henson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

J. Theoginis Kehaias

Mr. Kehaias, 37, has had ITDM since 1998. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kehaias meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a C operator's license from New Hampshire.

Harold M. Koski

Mr. Koski, 52, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Richard B. Lorimer

Mr. Lorimer, 54, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lorimer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Lester J. Manis

Mr. Manis, 46, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Manis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Trena L. Marshall

Ms. Marshall, 41, has had ITDM since 2007. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Marshall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from Pennsylvania.

Troy A. Martinson

Mr. Martinson, 35, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Ronald R. McDougle

Mr. McDougle, 68, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McDougle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nevada.

Richard L. Miller

Mr. Miller, 45, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Jerome A. Mjolsness

Mr. Mjolsness, 51, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mjolsness meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

David K. Mopps

Mr. Mopps, 50, has had ITDM since 1981. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mopps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a chauffeur's license from Indiana.

George E. Patton

Mr. Patton, 53, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Jack E. Rensing

Mr. Rensing, 51, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rensing meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Clayton M. Reynolds

Mr. Reynolds, 37, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reynolds meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Jeffrey S. Saint-Vincent

Mr. Saint-Vincent, 53, has had ITDM since 1998. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saint-Vincent meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Richard Scott

Mr. Scott, 45, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Gary A. Sweeney

Mr. Sweeney, 50, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sweeney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

David L. Wilhelm

Mr. Wilhelm, 40, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilhelm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Arkansas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience requirement and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 26, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–12757 Filed 6–1–09; 8:45 am]

BILLING CODE–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2005–20560]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 6 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 30, 2009. Comments must be received on or before July 2, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management

System (FDMS) Docket ID FMCSA–1999–5748; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2005–20560, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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

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

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 6 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 6 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Edmund J. Barron	Thomas E. Howard
Roger K. Cox	Billy L. Johnson
Myron D. Dixon	Clifford E. Masink

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 6 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 67 FR 17102; 70 FR 25878; 72 FR 34062; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 37891; 66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 68 FR 10301; 68 FR 19596; 70 FR 16886; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997; 72 FR 27624). Each of these 6 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 2, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 6 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision

requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 22, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–12773 Filed 6–1–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 28 newly-designated individuals and entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

DATES: The designation by the Acting Director of OFAC of the 28 individuals and entities identified in this notice pursuant to Executive Order 12978 is effective on May 27, 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 October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On May 27, 2009, the Acting Director of OFAC, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated 28 individuals and entities whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. AERONAUTICA CONDOR DE PANAMA, S.A., Panama; RUC # 581123–1–448204–93 (Panama) [SDNT]
2. AERONAUTICA CONDOR S.A. DE C.V. (a.k.a. AEROCONDOR S.A. DE C.V.), Hangar D–2 y D–3, Puerta 2, Aviacion General, Aeropuerto Internacional de Toluca, Toluca, Estado de Mexico, Mexico; Calle 3 Hangar 22 al 29, Aeropuerto Internacional Toluca, Toluca, Estado de Mexico C.P. 50500, Mexico; R.F.C. ACO–031113–MB8 (Mexico) [SDNT]
3. AGROESPINAL S.A., Calle 16 No. 41–210 of. 801, Medellin, Colombia; NIT # 800256233–0 (Colombia) [SDNT]
4. AGROGANADERA LOS SANTOS S.A., Calle 16 No. 41–210 of. 801, Medellin, Colombia; NIT # 800215934–1 (Colombia) [SDNT]
5. ASES DE COMPETENCIA Y CIA. S.A., Carrera 30 No. 74–45, Bogota, Colombia; Carrera 6A No. 22–46 Int. 110, Medellin, Colombia; Carrera 66A No. 3–50 Int. 69, Medellin, Colombia; NIT # 800213156–7 (Colombia) [SDNT]
6. BERMUDEZ DURAN, Felipe, Camino a San Mateo 41 Edif. Mackenzie—1003, Lomas Verdes, Naucalpan, Estado de Mexico C.P. 53020, Mexico; Puerto de Palo No. 128, Col. Residencial Colon, Toluca, Estado de Mexico C.P. 50120, Mexico; DOB 03 Jul 1988; C.U.R.P. BEDF880703HDFRRL09 (Mexico); R.F.C. BEDF880703 (Mexico) (individual) [SDNT]
7. BERMUDEZ LUQUE, Santiago, c/o AERONAUTICA CONDOR DE PANAMA, S.A., Panama; c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; Camino al Olivo 114, Vista Hermosa, Mexico City, Distrito Federal, Mexico; DOB 22 Aug 1987; POB Medellin, Colombia; C.U.R.P. BELS870822HNERQN14 (Mexico); Cedula No. 1126644222 (Colombia); Identification Number 87082253007 (Colombia) (individual) [SDNT]
8. BERMUDEZ SUAZA, Pedro Antonio (a.k.a. AGUILAR DEL BOSQUE, Mauricio; a.k.a. AGUILAR VELEZ, Luis Antonio; a.k.a. VEGA LUJAN, Diego Rodrigo; a.k.a. ''EL ARQUITECTO''), c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; c/o CONSTRUCTORA GUADALEST S.A., Medellin, Colombia; c/o FRANZUL S.A., Medellin, Colombia; c/o GRUPO GUADALEST S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; Av. Hipolito Taine 253 2, Col. Chapultepec Morales, Miguel Hidalgo, Mexico City, Distrito Federal 11560, Mexico; Camino a San Mateo 41, edificio Mackenzie, la Cuspide departamento 1003, Colonia Lomas Verdes, Naucalpan de Juarez, Estado de Mexico, Mexico; DOB 30 Mar 1957; alt. DOB 10 Mar 1958; alt. DOB 30 Mar 1959; alt. DOB 22 Aug 1959; POB Medellin, Colombia; alt. POB Huamantla, Tlaxcala, Mexico; Cedula No. 70123377 (Colombia); Credencial electoral AGBSMR59033015H800 (Mexico); Passport 05400005349 (Mexico);

R.F.C. VELD580310 (Mexico) (individual) [SDNT]

9. CONSTRUCTORA GUADALEST S.A., Correg. San Cristobal Vereda El Llano, Medellin, Colombia; NIT # 800147514–8 (Colombia) [SDNT]
10. CONSULTORIA EN CAMBIOS FALCON S.A. DE C.V., Centro Comercial Interlomas Local U–16 P.A., Boulevard Interlomas 5, Colonia La Herradura, Huixquilucan, Estado de Mexico C.P. 52784, Mexico; Paseo de la Herradura No. 5 P.A. Loc. 16, Col. La Herradura, Huixquilucan, Estado de Mexico C.P. 52784, Mexico; R.F.C. CCF–020819–183 (Mexico) [SDNT]
11. DURAN PORRAS, Gloria Amparo, c/o FRANZUL S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; DOB 11 Feb 1968; alt. DOB 02 Nov 1968; Cedula No. 42895110 (Colombia) (individual) [SDNT]
12. FRANZUL S.A., Calle 16 No. 41–210 of. 802, Medellin, Colombia; NIT # 811044587–2 (Colombia) [SDNT]
13. GRUPO FALCON DE PANAMA, S.A., PH Centro Comercial Los Pueblos Albrook, Local 47–D, Panama City, Panama; RUC # 556350–1–444254–07 (Panama) [SDNT]
14. GRUPO FALCON S.A., Calle 16 No. 41–210 of. 801, Medellin, Colombia; NIT # 800214711–1 (Colombia) [SDNT]
15. GRUPO GUADALEST S.A. DE C.V., Calle Enrique Wallon 424 Alts. Hab. 13, Rincon del Bosque y Presidente Mazarik, Colonia Polanco, Mexico City, Distrito Federal 11560, Mexico; Naucalpan de Juarez, Estado de Mexico, Mexico; R.F.C. GGU040603B20 (Mexico) [SDNT]
16. HERNANDEZ MEJIA, Jorge Alberto, c/o FRANZUL S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; c/o TAXI AEREO ANTIOQUENO S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; DOB 15 Jun 1962; Cedula No. 71530775 (Colombia) (individual) [SDNT]
17. HIERROS DE JERUSALEM S.A., Calle 16 No. 41–210 of. 801, Medellin, Colombia; NIT # 830513468–6 (Colombia) [SDNT]
18. JACOME DEL VALLE, Omar Alfredo (a.k.a. ''EL PIOLO''), c/o CONSULTORIA EN CAMBIOS FALCON S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; DOB 24 Oct 1958; POB Mexico; C.U.R.P. JAVO581024HDFCLM02 (Mexico) (individual) [SDNT]
19. LLANOTOUR LTDA (a.k.a. HOSTERIA LLANOGRANDE), Carretera Las Palmas cruce Aeropuerto Km. 3, Rionegro, Antioquia, Colombia; NIT # 890941440–4 (Colombia) [SDNT]
20. LOPEZ OSPINA, Carlos Antonio, c/o AGROESPINAL S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA S.A., Medellin, Colombia; c/o GRUPO FALCON S.A., Medellin, Colombia; Calle 50 No. 65–42 of. 205, Medellin, Colombia; DOB 06 Mar 1926; alt. DOB 03 Jun 1926; Cedula No. 3311296 (Colombia) (individual) [SDNT]
21. MEJIA ARTEAGA, Nora, c/o AGROESPINAL S.A., Medellin, Colombia; c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; c/o FRANZUL S.A., Medellin, Colombia; c/o GRUPO FALCON S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; c/o LLANOTOUR LTDA, Rionegro, Antioquia, Colombia; DOB 08 Mar 1946; POB Medellin, Colombia; Cedula No. 32488894 (Colombia) (individual) [SDNT]
22. MUNERA VELASQUEZ, Martha Marina, c/o GRUPO FALCON S.A., Medellin, Colombia; c/o LLANOTOUR LTDA., Rionegro, Antioquia, Colombia; DOB 09 Jun 1952; Cedula No. 32480630 (Colombia) (individual) [SDNT]
23. PEREZ MONTERO, Maria Marcela del Pilar, c/o AERONAUTICA CONDOR DE PANAMA, S.A., Panama; c/o AGROESPINAL S.A., Medellin, Colombia; c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o GRUPO FALCON S.A., Medellin, Colombia; DOB 29 May 1959; POB Bogota, Colombia; Cedula No. 41750752 (Colombia) (individual) [SDNT]
24. SANCHEZ MARTELL, Julio Cesar Jassan Estuardo (a.k.a. SANCHEZ MARTELL, Julio Cesar), c/o AERONAUTICA CONDOR DE PANAMA, S.A., Panama; c/o GRUPO FALCON DE PANAMA, S.A., Panama; c/o GRUPO GUADALEST S.A. DE C.V., Mexico City, Distrito Federal, Mexico; C. Enrique Wallon 424 3, Col. Polanco, Miguel Hidalgo, Mexico City, Distrito Federal 11560, Mexico; C. Las Palmas L H5C D 1102 1000, Cond. Costaventura Y X, Fracc. Playa Diamante, Acapulco, Guerrero, Mexico; DOB 16 Sep 1966; C.U.R.P. SAMJ660916HDFNRL17 (Mexico); Credencial electoral SNMRJL66091609H501 (Mexico); Passport 01370022046 (Mexico); R.F.C. SAMJ660916000 (Mexico) (individual) [SDNT]
25. SANCHEZ RIVERA, Doris Patricia, c/o FRANZUL S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; c/o TAXI AEREO ANTIOQUENO S.A., Medellin, Colombia; DOB 27 Oct 1966; Cedula No. 43681039 (Colombia) (individual) [SDNT]
26. SUAZA BARCO, Maria del Carmen (a.k.a. SUAZA BARCO, Carmen), c/o AGROESPINAL S.A., Medellin, Colombia; c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; c/o CONSTRUCTORA GUADALEST S.A., Medellin, Colombia; c/o FRANZUL S.A., Medellin, Colombia; c/o GRUPO FALCON S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; Calle Hamburgo No. 214 dpto. 22–3, Colonia Juarez, Mexico City, Distrito Federal C.P. 06600, Mexico; DOB 06 May 1921; POB Andes, Antioquia, Colombia; Cedula No. 32446309 (Colombia); Visa Number ID 2024702 (Mexico) (individual) [SDNT]
27. TAXI AEREO ANTIOQUENO S.A. (a.k.a. TAN S.A.), Calle 4 No. 65F–41 Hangar 70A, Medellin, Colombia; NIT # 811041365–0 (Colombia) [SDNT]
28. VASQUEZ VALENCIA, Natalia Andrea, c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o ASES DE COMPETENCIA Y CIA. S.A., Medellin, Colombia; c/o FRANZUL S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; c/o TAXI AEREO ANTIOQUENO S.A., Medellin, Colombia; DOB 01 Oct 1974; POB Medellin, Colombia; Cedula No. 43587931 (Colombia) (individual) [SDNT]

Dated: May 27, 2009.

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–12799 Filed 6–1–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Two Individuals 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 names of two newly-designated individuals 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 two individuals identified in this notice, pursuant to Executive Order 13224, is effective on May 14, 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 May 14, 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, two individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows:

AL-DARI, Muthanna Harith (a.k.a. AL DARI AL-ZAWBA', Doctor Muthanna Harith Sulayman; a.k.a. AL DARI, Dr. Muthanna; a.k.a. AL DARI, Muthana Harith; a.k.a. AL-DARI AL-ZAWBA'I, Muthanna Harith Sulayman; a.k.a. AL-DARI AL-ZOBAI, Muthanna Harith Sulayman; a.k.a. AL-DARI, Muthanna Harith Sulayman; a.k.a. AL-DHARI, Muthana Haris; a.k.a. AL-DHARI, Muthanna Hareth; a.k.a. AL-DHARI, Muthanna Harith Sulayman), Egypt; Amman, Jordan; Khan Dari, Iraq; Asas Village, Abu Ghurayb, Iraq; DOB 16 Jun 1969; alt. DOB circa 1969; citizen Iraq; nationality Iraq (individual) [SDGT].

AL-SHAMMARI, Sa'ad Uwayyid 'Ubayd Mu'jil (a.k.a. ABU HAMMUDI AL-SHAMMARI; a.k.a. ABU KHALAF; a.k.a. SA'AD AL-SHAMMARI; a.k.a. ''SAAD OWAIED OBAID''), Tal Hamis, Syria; 'Awinat Village, Rabi'ah District, Iraq; Tal Wardan, Iraq; DOB 3 Jul 1972; POB Tal Wardan, Ninevah, Iraq; alt. POB Tal Afar, Ninevah, Iraq (individual) [SDGT].

Dated: May 14, 2009.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–12823 Filed 6–1–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Two Individuals 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 two newly-designated individuals 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 the two individuals identified in this notice, pursuant to Executive Order 13224, is effective on May 27, 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 (*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 May 27, 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, two individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. AL-QUBAYSI, Abd-al-Munim (a.k.a. KOBEISSI, Abd Al Menhem; a.k.a. KOBEISSI, Abdel Menhem; a.k.a. KOBEISSI, Abdul Menhem; a.k.a. KOBEISSY, Abdul Menhem; a.k.a. KUBAYSY, Abd Al Munhim; a.k.a. QUBAYSI, Abd Al Menhem); DOB 1 Jan 1964; alt. DOB 1961; POB Beirut, Lebanon; nationality Lebanon; Passport RL 1622378 (Lebanon) (individual) [SDGT]

2. TAJIDEEN, Kassim (a.k.a. TAJI AL-DIN, Kasim; a.k.a. TAJI AL-DIN, Qasim; a.k.a. TAJIDDINE, Kassim Mohammad; a.k.a. TAJMUDIN, Kasim); DOB 21 Mar 1955; POB Sierra Leone; nationality Sierra Leone; alt. nationality Lebanon; Passport 0285669 (Sierra Leone); alt. Passport RL 1794375 (Lebanon) (individual) [SDGT]

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–12800 Filed 6–1–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–19

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 Revenue Procedure 97–19, Timely Mailing Treated as Timely Filing.

DATES: Written comments should be received on or before August 3, 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: Timely Mailing Treated as Timely Filing.

OMB Number: 1545–1535.

Form Number: Revenue Procedure 97–19.

Abstract: Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

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.

Estimated Number of Respondents: 5.

Estimated Time per Respondent: 613 hours 48 minutes.

Estimated Total Annual Burden Hours: 3,069.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12684 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–485–89]

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, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (Sections 1.988–0 through 1.988–5).

DATES: Written comments should be received on or before August 3, 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 regulation should be directed to Carolyn N. Brown, (202) 622–6688, or 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: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89.

Abstract: Internal Revenue Code sections 988(c)(1)(D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12687 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

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 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

DATES: Written comments should be received on or before August 3, 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, 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: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate

mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Time per Respondent: 64 hours, 16 minutes.

Estimated Total Annual Burden Hours: 758,989.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12689 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 2, 2009. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Description: OTS staff uses the information provided by the requesters to respond to their requests for unpublished information. The information enables the staff to locate and review responsive information, and to evaluate the burden to the agency and disruption of its supervisory activities more quickly than could be done without the information. OTS staff also uses the information to help determine whether the requester's need for the unpublished information outweighs the agency's confidentiality concerns.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 25.

Estimated Burden Hours per Response: 5 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 125 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: May 27, 2009.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E9–12711 Filed 6–1–09; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–62–89]

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, CO–62–89 (TD 8407), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (Section 1.382–3).

DATES: Written comments should be received on or before August 3, 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 regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or 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: Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1260.

Regulation Project Number: CO–62–89 (Final).

Abstract: Internal Revenue Code section 382(l)(5) provides relief from the application of the section 382 limitation for bankruptcy reorganizations in which the pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation. These regulations concern the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title 11 or similar case rather than the confirmation date of a plan.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10 hours.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1 hour.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12690 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–21–91]

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 temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

DATES: Written comments should be received on or before August 3, 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 this regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or 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: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91.

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12688 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8

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 Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

DATES: Written comments should be received on or before August 3, 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 revenue procedures should be directed to Carolyn N. Brown, at (202) 622–6688, or 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: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and State, local or Tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,986.

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: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12686 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 23, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, July 23, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12769 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, July 22, 2009, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12758 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, July 14, 2009, at 2 p.m. Eastern time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12755 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, July 8, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, July 8, 2009, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12752 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 7, 2009.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, July 7, 2009, at 1 p.m. Pacific time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Dave Coffman. For more information please contact Mr. Coffman at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12741 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, July 14, 2009, at 9:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12739 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, July 13, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12735 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, July 15, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12734 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, July 21, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12733 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, July 21, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12691 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 9, 2009 and Friday, July 10, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, July 9, 2009, from 8 a.m. to 5:00 p.m. and Friday 8 a.m to 3 p.m. Central Time in Atlanta, GA. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12767 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, July 9, 2009, at 2 p.m. Eastern time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12764 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, July 15, 2009, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12683 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, July 1, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12732 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, July 28, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 27, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–12775 Filed 6–1–09; 8:45 am]

BILLING CODE 4830–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 09–03).

TIME AND DATE: 10:15 a.m. (EDT), June 4, 2009, Young Harris College, Clegg Fine Arts Building, Glenn Auditorium, 1 College Street, Young Harris, Georgia 30582.

STATUS: Open.

Agenda

Old Business

Approval of minutes of April 2, 2009, Board Meeting.

New Business

1. Chairman's Report.
2. President's Report.

A. Potential gas-fired generation plant.

3. Report of the Finance, Strategy, Rates, and Administration Committee.

A. Modified two-part real-time pricing product.

B. Seasonal time-of-use rates and interaction with growth credits.

4. Report of the Operations, Environment, and Safety Committee.

A. Contract with Areva NP/DZ, LLC, for Nuclear Steam Supply System services and related parts.

5. Report of the Audit, Governance, and Ethics Committee.

6. Report of the Community Relations and Energy Efficiency Committee.

A. Temporary enhanced growth credit policy.

B. Grant of a 30-year term public recreation easement to Tennessee Wildlife Resources Agency affecting 8.6 acres on Fort Loudoun Reservoir.

C. Regional Resource Stewardship Council membership.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any

of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 28, 2009.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E9–12898 Filed 5–29–09; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice to Delete System of Records.

SUMMARY: The Department of Veterans Affairs (VA) is deleting a system of records entitled ''Center for Minority Veterans Management Information System-VA'' (95VA00M), which was established at 64 FR 23900, dated May 4, 1999. The system was to maintain an automated database containing demographic data on veterans that the Center may use to analyze trends on how VA serves minority veterans. This system of records is being deleted because this program was never active in the Center for Minority Veterans and the records were never collected. When requested, the Department's Office of Policy, Preparedness and Planning has the appropriate personnel, knowledge and ability to provide statistical analysis of minority veterans' utilization of VA business lines for the CMV to meet its mission.

A ''Report of Intention to Publish a Federal Notice of Deletion of a System of Records'' and a copy of the deletion of system notice have been provided to the appropriate Congressional committees and to the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

DATES: *Effective Date:* June 2, 2009

FOR FURTHER INFORMATION CONTACT: Renaee Allen, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, *Telephone:* (202) 461–6191 (this is not a toll-free number).

Approved: May 13, 2009.

John R. Gingrich,

Chief of Staff, Department of Veteran Affairs.

[FR Doc. E9–12779 Filed 6–1–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 2, 2009

Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Alabama Sturgeon (Scaphirhynchus suttkusi); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0058; 92210–1117–0000–FY08–B4]

RIN 1018–AV51

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Alabama Sturgeon (Scaphirhynchus suttkusi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Alabama sturgeon (*Scaphirhynchus suttkusi*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 524 kilometers (326 miles) of river fall within the boundaries of the critical habitat designation. The critical habitat includes portions of the Alabama and Cahaba Rivers in Autauga, Baldwin, Bibb, Clarke, Dallas, Lowndes, Monroe, Perry, and Wilcox Counties, in Alabama.

DATES: This rule becomes effective on July 2, 2009.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at *http://www.regulations.gov.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208–B Main Street, Daphne, AL 36526; telephone 251/441–5858; facsimile 251/441–6222.

FOR FURTHER INFORMATION CONTACT: Jeff Powell, Aquatic Species Biologist, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208–B Main Street, Daphne, AL 36526; telephone 251/441–5858; facsimile 251/441–6222. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

In this final rule, we intend to discuss only those topics directly relevant to the distribution of the Alabama sturgeon and the designation of its critical habitat. For more information on the species, refer to the final and proposed listing rules published in the **Federal Register** on May 5, 2000 (65 FR 26438), and on March 26, 1999 (64 FR 14676), respectively.

Sturgeon is the common name used for large, bony-plated, primitive fishes in the family Acipenseridae which typically grow slowly and mature late in life. The Alabama sturgeon (*Scaphirhynchus suttkusi*) is the smallest of all the North American sturgeons, typically weighing only 1 to 2 kilograms (2 to 4 pounds) at maturity. The head is broad and flattened shovel-like at the snout, with a tubular and protrusive mouth. As with all sturgeon species, there are four barbels (whisker-like appendages) located on the bottom of the snout in front of the mouth that are used to locate prey. Bony plates called scutes line the body in five rows, one on the back and two each on the middle and lower sides. Bony plates separated by sutures also cover the head. The body narrows abruptly to the rear-forming a narrow stalk between the body and tail. The upper lobe of the tail fin is elongated and ends in a long filament. Coloration of the upper body is light tan to golden yellow, with a creamy white belly. Sturgeon are long-lived fishes. Although the life span of the Alabama sturgeon in the wild is unknown, Burke and Ramsey (1985) provided estimates on three individuals that ranged from 2 to 10 years of age.

The Alabama sturgeon is endemic to rivers of the Mobile River Basin below the Fall Line (inland boundary of the Coastal Plain) (Mettee *et al.* 1996, p. 83; Boschung and Mayden 2004, p. 109). Its current range includes the Alabama River from R.F. Henry Lock and Dam downstream to the confluence of the Tombigbee River. The species is also known to survive in the Cahaba River. For information on range of the species, see the *Criteria Used To Identify Critical Habitat* section of this rule.

Despite extensive and intensive efforts in the decade prior to its listing, only eight Alabama sturgeon were captured, or reported captured and released. These fish were collected from several locations in the Alabama River between Millers Ferry Lock and Dam and its confluence with the Tombigbee River (Rider and Hartfield 2007, p. 490). Since the 2000 publication of the final rule listing the species under the Act, two Alabama sturgeon have been captured or reported captured. One of these was captured, videotaped, and released by a fisherman in the lower Cahaba River in July 2000 shortly after publication of the final rule. The most recent capture was an individual collected from the Alabama River below Claiborne Lock and Dam on April 3, 2007, by the Alabama Department of Conservation and Natural Resources (ADCNR). This fish was implanted with a sonic tag and released on April 17, 2007, at the location where it was captured.

Flows in the Alabama River are heavily influenced by upstream releases from Alabama Power Company and U.S. Army Corps of Engineers (USACE) hydropower projects, and riverine habitats are fragmented by Claiborne and Millers Ferry Locks and Dams. This 386-kilometer (240-mile) stretch of the Alabama River, along with the lower Cahaba River, represents the last remaining viable habitat for the sturgeon.

Previous Federal Actions

On May 5, 2000, we listed the Alabama sturgeon as endangered under the Act (65 FR 26438). In that final listing rule, we determined that designation of critical habitat was prudent but that critical habitat was not determinable, due to the lack of information on the sturgeon's biological and habitat needs.

Following our listing decision, the Alabama-Tombigbee Rivers Coalition (Coalition) brought suit in the United States District Court for the Northern District of Alabama under the citizen-suit provision of the Act and the judicial review provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), alleging several defects in the listing process. The District Court dismissed the Coalition's lawsuit for lack of standing, but on appeal, the U.S. Court of Appeals for the Eleventh Circuit reversed the District Court's decision, concluding that the Coalition did have standing to challenge the listing decision. On remand, the District Court granted the United States' motion for summary judgment but ordered us to issue both a proposed and a final rule designating critical habitat by May 14, 2006, and November 14, 2006, respectively. *Alabama-Tombigbee Rivers Coalition et al.* v. *Norton et al.,* No. CV–01–0194–VEH (Final Order, Nov. 14, 2005). The Coalition appealed and the District Court stayed the judgment pending review by the Eleventh Circuit. Under the direction of the District Court, we would have 2 years from the time of the Eleventh Circuit's decision to complete the designation of critical habitat.

On February 8, 2007, the Eleventh Circuit affirmed the decision of the District Court, finding among other things that vacating the listing decision was not the proper remedy for failure to designate critical habitat. *Alabama-Tombigbee Rivers Coalition et al.* v. *Kempthorne et al.,* 477 F.3d 1250 (11th

Cir. 2007). On May 16, 2007, the Eleventh Circuit issued its judgment as a mandate, thus lifting the stay imposed by the District Court and requiring us to issue a prudency determination and, if prudent, a proposed rule designating critical habitat within 1 year (May 16, 2008), and a final rule designating critical habitat within 1 year after that (May 16, 2009). The Coalition sought Supreme Court review of the Eleventh Circuit's decision; that request was denied on January 7, 2008. *See Alabama-Tombigbee Rivers Coalition et al.* v. *Kempthorne et al.,* 128 S. Ct. 877 (2008).

We published the proposed designation of critical habitat for the Alabama sturgeon in the **Federal Register** on May 27, 2008 (73 FR 30361). That proposal had a 60-day comment period, ending July 28, 2008. On December 30, 2008, we announced the opening of a public comment period and the scheduling of a public hearing on the proposed revised designation of critical habitat for the Alabama sturgeon (73 FR 79770). We also announced the availability for public comment of a draft Economic Analysis (DEA) and an amended required determinations section of the proposal. In addition, we sought comment on our proposal to change the first primary constituent element (PCE) from its original description because we had determined that the original wording failed to indicate that the flow needs of the species are relative to the season of the year. The comment period was opened for 30 days from December 30, 2008, to January 29, 2008. We then published a notice on January 28, 2009 (FR 74 4912), extending the comment period to allow all interested parties an additional opportunity to comment after the public hearing that was also held on January 28, 2009. This comment period closed on February 9, 2009.

For more information on previous Federal actions or for more information on the endangered Alabama sturgeon or its habitat, refer to our proposed and final listing rules published in the **Federal Register** on March 26, 1999 (64 FR 14676), and on May 5, 2000 (65 FR 26438), respectively, or request copies of them from the Alabama Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**). We are designating critical habitat in accordance with section 4(b)(2) of the Act.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Alabama sturgeon during two comment periods. The first comment period associated with the publication of the proposed rule (73 FR 30361) opened on May 27, 2008, and closed on July 28, 2008. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened December 30, 2008, was extended on January 28, 2009, and closed on February 9, 2009. We received two requests for a public hearing. We held a public hearing on January 28, 2009. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received 12 comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 22 comment letters addressing the proposed critical habitat designation or the draft economic analysis. During the January 28, 2009, public hearing, 11 individuals or organizations made comments on the designation. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into four general issues specifically relating to the proposed critical habitat designation for Alabama sturgeon and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that includes familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Alabama sturgeon. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Some reviewers suggested minor editorial changes. These have been incorporated into the final rule as appropriate. Specific peer reviewer comments are addressed in the following summary and are also incorporated into the final rule as appropriate.

(1) *Comment:* One reviewer mentioned that in the rule we state the life span of the Alabama sturgeon is unknown, yet we then estimate individuals could live from 12 to 15 years, possibly longer.

Our Response: Although the life span of the Alabama sturgeon in the wild is unknown, Burke and Ramsey (1985) provided estimates on three individuals that ranged from 2 years to 10 years of age. In general, all sturgeon species are long-lived species, some may live longer than 15 years.

(2) *Comment:* The reviewer understands that the critical habitat proposal must be based on the known range of the species at the time it was listed as ''endangered'', but suggests that it might be prudent to expand the section to match the species historical range.

Our Response: According to section 3 of the Act, critical habitat includes those areas that are occupied at the time of listing that contain the physical and biological features necessary for the conservation of the species. Areas not occupied at the time of listing can be included only if it is determined that they are essential to conservation of the species and that including only areas occupied at the time of listing in critical habitat may not be adequate to conserve the species. Based on our best available information (collection records and supporting PCEs), we have determined that such unoccupied areas are not essential to the conservation of the species.

(3) *Comment:* Would habitat descriptions from recent collections of larval and juvenile pallid and shovelnose sturgeon in the Mississippi River be of use in trying to define the preferred habitats of larval and juvenile Alabama sturgeon in the Alabama River?

Our Response: Yes. We considered all recently published information on these topics in the rule.

(4) *Comment:* One reviewer suggests that there has been a gradual decline in the Alabama River discharge recently. They referenced the continued lowering of an industry's intake pipes to account for the river's decreasing stage.

Our Response: This is likely the result of the drought over the last two years, or, an increase in upstream withdrawals. We recommend referring the issue of lowered industry intake pipes to the Alabama Office of Water Resources.

(5) *Comment:* One reviewer noted that the sonic-tagged Alabama sturgeon was

released on April 17, 2007, not May 2007.

Our Response: We appreciate the correction. We have corrected this in the final rule.

(6) *Comment:* One reviewer stated that they received a credible report from an angler that caught an Alabama sturgeon below R.F. Henry Lock and Dam on April 11, 2008.

Our Response: This report was considered in the rule.

(7) *Comment:* One reviewer stressed the importance of river connectivity. The reviewer then stated the primary reason the species is endangered is habitat fragmentation caused by large dams on the Alabama River, and that fish bypass or fish passage opportunities should be explored further.

Our Response: Habitat fragmentation was one of the primary reasons for listing the species, and we will continue to work with our partners to address fish passage in the Alabama River.

(8) *Comment:* One reviewer suggests that higher flows from R.F. Henry could potentially attract Alabama sturgeon, especially in the winter and spring when the species migrates upstream.

Our Response: The comment is noted and we will continue to work with our partners to explore this possibility.

(9) *Comment:* One reviewer agrees that the pallid and shovelnose sturgeons are acceptable surrogates for the Alabama sturgeon; the reviewer also suggests that sturgeon in the genera *Pseudoscaphirhynchus* and *Acipenser* also have similar life histories that could be applied to the Alabama sturgeon. This includes information on temperature and dissolved oxygen preferences, migration patterns, reproduction, age and growth, habitat preferences, and diet.

Our Response: In the proposed rule, we stated that we would utilize information on the Alabama sturgeon's closest two relatives, the pallid and shovelnose sturgeon. However, there are still considerable data gaps that could be filled by other sturgeon species. In this final rule, we use information resulting from research on other sturgeon species in the background sections where appropriate.

(10) *Comment:* One reviewer suggests that ''the distance of free-flowing habitat currently available is likely detrimental to the Alabama sturgeon, that is, there is likely NOT enough free-flowing habitat for larval development in the reservoirs above Claiborne and Millers Ferry locks and dams. The designation of critical habitat as outlined in the proposed rule and the revised proposed rule is necessary to protect the last remaining habitat for the Alabama sturgeon, but improvements in riverine habitat MUST be made in the Alabama River for migrating adults and drifting larvae if the species is to survive and eventually recover.''

Our Response: While we designated areas meeting the definition of critical habitat, the area designated is essentially the best remaining habitat available for the species. We recognize the need to continue to improve conditions related to the distance of free-flowing habitat within designated critical habitat and elsewhere in the rivers (*i.e.,* fish passage) and continue to work with our partners to do so.

(11) *Comment:* One reviewer suggests that we spend more time discussing the potentially lethal effects of low dissolved oxygen levels. He states that levels of 3 milligrams per liter (mg/L) (3 parts per million (ppm)) and water temperatures of 22–26° Celsius (C) (72–79° Fahrenheit (F)) appeared to be lethal for juvenile Atlantic and shortnose sturgeons. Allowing a minimum level of 4 mg/L (4 ppm) in the Alabama River may be very close to a lethal level for the Alabama sturgeon.

Our Response: We have used the best available science to determine the water quality needs of the Alabama sturgeon. We have reviewed the information in the proposed rule and determined that clarification of the fifth PCE was required to more clearly state that situations involving dissolved oxygen of less than 5 mg/L (5 ppm) would not be the norm within the river. We have clarified the fifth PCE to state, ''dissolved oxygen levels shall not be less than 5 mg/L (5 ppm); except under extreme conditions due to natural cause or downstream of existing hydroelectric impoundments, where it can range from 5 mg/L to 4 mg/L (5 ppm to 4 ppm), provided that the water quality is favorable in all other parameters.''

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to designate critical habitat for the Alabama sturgeon are addressed below.

During the first comment period, we received comments from both the States of Georgia and Alabama disagreeing with the inclusion of 131.4 cubic meters per second (cms) (4,640 cubic feet per second (cfs)). Following the revision, both States agreed with the first PCE as it appears in the final rule.

(12) *Comment:* The State of Georgia recommends that the Service engage in a NEPA analysis in order to fully address the impact of this rule.

Our Response: It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

(13) *Comment:* The State of Georgia requested that the lateral extent of the proposed critical habitat should be clarified, and identification of activities that may cause stages in the Alabama and Cahaba Rivers to decline below the ''ordinary high water mark.''

Our Response: For the purpose of this rule, we have applied the definition for ''ordinary high water mark'' found at 33 CFR 329.11 as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.'' It is our position that the ''ordinary high water mark'' does not imply that consultation is required every time the river stage falls below that point. As stated in the ''*Application of the ''Adverse Modification'' Standard*'' section, activities that cause declines in flow, resulting in a decline in river stage, will be evaluated on a case by case basis. Activities that may cause stages to decline include, but are not limited to, drought conditions and excessive water withdrawals.

(14) *Comment:* The State of Alabama noted that they are committed to continuing to work with the Service, USACE, and other agencies to develop a drought operations plan (Alabama Drought Operations Procedure—ADROP) for the Alabama River.

Our Response: We appreciate the proactive steps Alabama has taken to begin development of a drought operations plan for the Alabama River. We believe this is an important step to ensuring all stakeholders fully understand the minimum flow requirements that may be imposed during future drought events.

(15) *Comment:* The Alabama Governor's Office stated that any flow

requirement for the designated critical habitat needs to be flexible enough to realistically deal with drought conditions.

Our Response: We appreciate the Office of the Governor's concern with this matter. We will continue to work with all stakeholders and regulatory agencies to the best of our ability to ensure that this will happen. We also will continue working with the State, Industry, and the USACE to finalize a drought operations plan for the Alabama-Coosa-Tallapoosa (ACT) Basin that has an Adaptive Management Approach.

Public Comments

(16) *Comment:* One commenter questioned why is it going to take a year to complete the designation.

Our Response: On May 16, 2007, the Eleventh Circuit issued its judgment as a mandate, requiring the Service to issue a prudency determination and, if prudent, a proposed rule designating critical habitat within one year (May 16, 2008), and a final rule designating critical habitat within one year after that (May 16, 2009). *Alabama-Tombigbee Rivers Coalition et al.* v. *Kempthorne et al.*, 477 F.3d 1250 (11th Cir. 2007). We needed all of the time allowed by the court to review the best scientific information about the species, allow for public participation in the process, conduct an economic analysis, reviewed comments, and coordinate with stakeholders on the designation.

(17) *Comment:* One commenter clearly voiced his objection to this designation, stating that it is, ''a waste of time for good people, blowing taxpayers' money and unacceptable Federal interference with citizen activity and economic growth.''

Our Response: This action was court-ordered and non-discretionary. On May 16, 2007, the Eleventh Circuit issued its judgment as a mandate, requiring the Service to issue a prudency determination and, if prudent, a proposed rule designating critical habitat within one year (May 16, 2008), and a final rule designating critical habitat within one year after that (May 16, 2009). *Alabama-Tombigbee Rivers Coalition et al.* v. *Kempthorne et al.*, 477 F.3d 1250 (11th Cir. 2007).

(18) *Comment:* One commenter states that, ''the damage to the Alabama River and the Alabama Sturgeon were done without intention, to disregard further damage to Alabama ecosystems would be an ignorant disregard for current environmental science. The building of Claiborne Lock and Dam, and the subsequent disruption of the Alabama River ecosystem, has had negligible economic benefit in Alabama, but protection of the remaining wild places we have will have positive effects for tourism and environmental quality.''

Our Response: Comment noted.

(19) *Comment:* The Birmingham Audubon Society fully supports the designation and also states that the economic impact of this designation is not likely to be a serious burden.

Our Response: Comment noted.

(20) *Comment:* One commenter stated the USACE's locks and dams on the Alabama River are not meeting their intended purpose (approximately 3 boats per month use the locks) and are a waste of Federal dollars. The commenter then states ''why not allow these poor counties where this waterway goes through—give them the one to two million dollars it takes to maintain these locks. Let them put that into economic development commissions for the counties and let them decide how to develop their own economy.''

Our Response: Comment noted.

(21) *Comment:* One commenter recommended that the Service engage in a NEPA analysis in order to fully address the impact of this rule.

Our Response: See response under Comment (14).

(22) *Comment:* The Cahaba River Society (CRS) fully supports the designation. They recommend extending the designation an additional 25 kilometers (km) (16 miles (mi)) of the Cahaba River; upstream to the Cahaba National Wildlife Refuge, as well as the Alabama River above R.F. Henry Lock and Dam, up the Coosa River to Jordan Dam, and up the Tallapoosa River to Thurlow Dam.

The CRS believes that this and other critical habitat designations will be a powerful tool for improving understanding among developers, builders, and land-use decision-makers about the importance of natural flow regimes, morphology and stability of river channels, the value of free-flowing habitat, and the significance of water chemistry to maintain a healthy river fauna that otherwise will not be confronted. The CRS goes on to state that, ''in the long run, the educational value of designating critical habitat is among the most important of the benefits attained.''

Our Response: Based on the best available scientific information, we have concluded at this time that the lower Coosa and Tallapoosa Rivers were not occupied at the time of listing. The last Alabama sturgeon records we have from these rivers are prior to the impoundments on the Alabama River. The current upper boundary on the Cahaba River was based on the general location of the ''fall line'' and has been used as such for other species (*e.g.*, in the critical habitat for three threatened mussels and eight endangered mussels in the Mobile River Basin (69 FR 40083)). If information becomes available that sturgeon were utilizing these stretches at the time of listing, or that this area is essential to the conservation of the sturgeon, this rule could then be revised based on the new information.

(23) *Comment:* One commenter stated that ''given the absence of the species in large areas of the proposed critical habitat we recommend additional clarification is provided that clearly states how such areas are essential for the conservation of the species.''

Our Response: We agree that certain areas might not appear to be occupied some of the time; however, sturgeons are not stationary species. It is not uncommon for some species to migrate up to 578 km (359 mi) to spawn, and then drift another 240 km (149 mi) as larvae develop (DeLoney *et al.* 2007; Hrabik *et al.* 2007). We believe the entire unit, as designated, was occupied at the time of listing and contains one or more PCEs throughout the unit. Therefore, the areas designated meet the definition of occupied critical habitat as set forth in the Act.

(24) *Comment:* Two commenters believe the Service lacks the information to support that Alabama sturgeon could occupy the Cahaba River and impounded areas above Claiborne, Millers Ferry, and R.F. Henry lock and dams.

Our Response: In July 2000, an Alabama sturgeon was collected near the mouth of the Cahaba River, and we have reliable information that an individual was collected and released in April 2008 by an angler immediately below R.F. Henry Dam. Additionally, based on our best available knowledge of other sturgeon species, these individuals will move considerable distances from the points at which they were collected. Although we do not have recent records from the Claiborne pool, it contains one or more PCEs and is contiguous with occupied habitats upstream and downstream; we conclude it was used by the species in its movements up and down the river at the time of listing.

(25) *Comment:* One commenter believes our approach to identifying the physical and biological requirements of the Alabama sturgeon is ''flawed'' because we state that we use information on the pallid and shovelnose sturgeon.

Our Response: The Alabama sturgeon is an extremely rare species and little information is available about its physical and biological requirements. Therefore, as required by the Act, we used the best available information which was generated mainly through the studies of two of its closest relatives, the pallid and shovelnose sturgeon. Considerable information has been recently published about the pallid and shovelnose (cited in the proposed rule), and that information was used as a basis for many of the assumptions made for the physical and biological requirements. We believe that this is the best scientific data available as required by the Act.

(26) *Comment:* One commenter questioned our use of ''stable'' in PCE Number 2. They also question the association of mussel beds with stable substrates.

Our Response: For the purpose of this analysis, stable refers to consolidated bed materials that contain substrate materials that are somewhat embedded and not easily moved. The presence of mussel beds in these areas is simply used to illustrate that these areas have not likely been disturbed in the recent past.

(27) *Comment:* One commenter did not understand how the fourth PCE could apply to impounded areas of the Alabama River, because of the presence of Claiborne, Millers Ferry, and R.F. Henry Locks and Dams.

Our Response: We are not implying that the impounded areas contain the fourth PCE. Presence of all PCEs is not required for designation. We believe the entire unit, as designated, was occupied at the time of listing and contains one or more PCEs throughout the unit. Therefore, the areas designated meet the definition of occupied critical habitat as set forth in the Act.

(28) *Comment:* One commenter recommended the Service exclude all existing Federally-maintained channels, marinas, boat ramps, public swimming areas and docking facilities within the specified reach, existing within-bank dredged material disposal areas, and Federal reservoirs, locks and dams, because of the importance of navigation and recreation on the Alabama River and hydropower generation by Federal power plants.

Our Response: As was stated in the proposed rule (73 FR 30373), critical habitat does not include manmade structures (such as buildings, aqueducts, docks, dams, runways, roads, and other paved areas) and the land or waterway on which they are located within the legal boundaries of this rule. However, this language does not include waterways (*i.e.,* Federal reservoirs), public swimming areas, and existing within-bank dredging material disposal areas that are owned by the State of Alabama, found to be occupied at the time of listing, and to contain one or more PCEs needed by the Alabama sturgeon; which is why these areas have been included within the designation.

(29) *Comment:* One commenter was unclear how or when section 7 consultation would be required.

Our Response: As stated in the final rule, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species. Please refer to the *Section 7 Consultation* section of the rule below for further discussion.

Comments About Flow and Water Management

The majority of the comments during the initial comment period (ending July 27, 2008) were specific to the first PCE, especially the 131.4 cms (4,640 cfs) flow requirements. As stated in the revised rule (73 FR 79772), we removed the 131.4 cms (4,640 cfs) from the first PCE because we believed focusing on 131.4 cms (4,640 cfs) failed to account for the complexity of variables that needs to be analyzed to determine effects to the sturgeon.

(30) *Comment:* We received a total of eight written comments during the initial comment period (ending July 28, 2008) that addressed flow and the value included in the first PCE (131.4 cms (4,640 cfs)). All comments, in various ways, specifically questioned the biological relevance of the 131.4 cms (4,640 cfs) flow.

Our Response: We have historically and consistently maintained that a 7-day average minimum flow of 131.4 cms (4,640 cfs) in the Alabama River at Montgomery is ''adequate to sustain the Alabama sturgeon during periods of drought.'' Proposals to allow flows to go below that level are likely to continue to occur during drought conditions (but could be proposed at other times) and we would recommend Federal agencies enter into consultation on such proposals whenever they occur because adverse effects are possible. We agree that the flow was not created as a ''sturgeon'' flow, but rather a ''navigation'' flow. The origin of the 131.4 cms (4,640 cfs) can be traced back to a 1972 letter from Alabama Power Company (APC) to the USACE where APC concurs that a 7-day average flow of 131.4 cms (4,640 cfs) is acceptable for a trial period. It goes on to state that the 131.4 cms (4,640 cfs) is based on the 7Q10 for the USGS Gage at Montgomery.

We revised the proposed rule in order to better clarify our position on the 131.4 cms (4,640 cfs) flow. The revision changed the first PCE to the following:

> A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality of discharge over time) necessary to maintain all life stages of the species in the riverine environment, including migration, breeding site selection, resting, larval development, and protection of cool water refuges (*i.e.*, tributaries).

We changed the first PCE from its original description, because we determined that the original wording failed to indicate that the flow needs of the species are relative to the season of the year. For example, sturgeon likely need a higher flow in the spring to successfully spawn than was indicated by the 131.4 cms (4,640 cfs) in the original PCE. Also, we determined that it was more descriptive and helpful to potential action agencies to describe the flow habitat needs of the species in relation to their seasonality and how those seasonal flows allow for maintenance of all life stages. Lastly, we determined that while we believe flows lower than 131.4 cms (4,640 cfs) may involve adverse affects to the species (and therefore we will continue to recommend consultation), depending upon other factors, lower flows may or may not be found to result in measurable adverse effects. Therefore, focusing on 131.4 cms (4,640 cfs) in the PCE fails to account for the complexity of variables that need to be analyzed to determine effects to the sturgeon. We will continue to use 131.4 cms (4,640 cfs) as a trigger for section 7

consultation, but not necessarily a threshold for adverse modification.

(31) *Comment:* One commenter indicated the Service has not demonstrated why additional requirements or regulatory PCEs (for flows) are necessary for water quality.

Our Response: It was not our intent to designate additional flow requirements in order to ensure State water quality compliance. As stated by the commenter with this question, it is the responsibility of the Alabama Department of Environmental Management (ADEM) to ensure Clean Water Act compliance through the issuance and enforcement of National Pollution Discharge Elimination System (NPDES) permits.

(32) *Comment:* APC noted that they are committed to continuing to work with the Service, USACE, and other agencies to develop a drought operations plan (Alabama Drought Operations Procedure—ADROP) for the Alabama River.

Our Response: We appreciate the proactive steps APC has taken to begin development of a drought operations plan for the Alabama River (*i.e.*, ADROP). We believe this is an important step to ensuring all stakeholders fully understand the minimum flow requirements that may be imposed during future drought events.

(33) *Comment:* APC presented summaries of the data (discharge, temperature, and dissolved oxygen levels) they collected on August 5, 2008, and October 21, 2008, at various locations on the Alabama River downstream of Claiborne Lock and Dam. One of these locations was a USACE dredge site that has been dredged the last two years and has been routinely occupied by the tagged Alabama sturgeon. They concluded that temperature and dissolved oxygen levels were fairly well mixed at these locations and further suggested that the tagged fish may not be adversely affected by dredging.

Our Response: We appreciate APC's efforts to analyze flow, temperature, and dissolved oxygen levels in these areas. This information will be very useful as we analyze habitats that have been occupied by the tagged fish. However, upstream of Claiborne Lock and Dam conditions are likely quite different and will likely yield very different results. Upstream of the dams (Claiborne and Miller Ferry) conditions very much like a reservoir and are not as well mixed as areas downstream of Claiborne Lock and Dam, which receives a constant flow from the crested spillway. Therefore it would not be a fair comparison to correlate these results with upstream areas that do not receive a constant flow.

(34) *Comment:* The USACE believes the Memorandum of Agreement (MOA), which includes the 1994 ''White Paper'', has served to protect the Alabama sturgeon and its habitat. They believe that the MOA should be referenced in the rule, acknowledging its protective value. They believe it should continue to be adhered to in absence of newer biological information.

Our Response: The 1994 ''White Paper'' is referenced in several locations in the rule and we will continue to use it. However, we will also modify it as needed and make future decisions based on the best available science.

(35) *Comment:* Although the USACE agrees with the proposed changes to the first PCE, they state that, ''if data exist to support the designation of a flow regime, then a detailed flow regime should be fully described in the PCE with references to supporting studies.'' They go on to say, ''without a fully described flow regime, the PCE remains flawed, providing uncertain protection to the species as well as uncertain economic impacts.''

Our Response: We do not believe a specific flow measurement would be applicable at all times of the year and we do not have the data to support a fully described flow regime. Our position continues to support a variety of natural, seasonably variable flows that allow for maintenance for all life stages of the sturgeon. In order to develop a seasonably variable set of flow estimates for the species, we need long-term stream gauging records and a continuous water quality monitoring network at several points on the Alabama River. At this time, there are a limited number of long term discharge records for the Alabama River. The station with the longest period of record (67 years) is the USGS station at Montgomery (station ID 0242000). We welcome the opportunity to partner with the USACE to begin developing a long term discharge and water values study.

(36) *Comment:* The APC had several comments about flow requirements and the analysis they conducted on the data from the tagged Alabama sturgeon below Claiborne Lock and Dam, these include:

(a) ''The relationship of flow to the specimen's needs is inconclusive'' and there is ''no basis to identify any one ideal flow for the Alabama sturgeon.''

(b) ''The specimen's behavior is not consistent with the second PCE.'' Also, the behavior of the tagged fish does not indicate a preference for deep pools habitats.

(c) ''There is a significant correlation between the tracked specimen's location and historic dredging sites.''

Our Response: (a) We agree that identifying one ideal flow is extremely difficult and may not, in the long run, be the most beneficial recommendation for the sturgeon. As stated in clarification letter to Industrial Economics (IEc) on October 22, 2008, we believe that flow needs for the species are relative to the season of year. We removed the 131.4 cms (4,640 cfs) from the first PCE to reflect this need for flow seasonality.

(b) Our statement in the rule indicated that the Alabama sturgeon ''prefers'' a river channel with stable sand and gravel river bottoms, and bedrock walls, including associated mussel beds. This doesn't mean that they always occur in these habitats. The conclusions drawn by APC are based upon data taken from one fish. Based on the best available scientific information on other North American sturgeon species, sturgeons do prefer these optimal conditions.

(c) While we appreciate the effort of APC to summarize and share their assessments of the tracking data, we do not completely agree that dredging creates favorable conditions for the sturgeon. The tagged sturgeon below Claiborne Lock and Dam is likely occupying this section of the river because of temperature (flow from Sizemore Creek) or food resources. We do agree with APC's hypothesis that adult sturgeon can exist under a variety of conditions, and focusing on spawning season and the particular needs of eggs and larvae may ultimately have a greater effect on long term survival than measures that focus on adult specimens. We welcome the opportunity to work with APC to explore these ideas.

Comments About the Science Used in This Designation

(37) *Comment:* The Alabama-Tombigbee Rivers Coalition (ATRC) urges the Service to acknowledge the serious limitations in its scientific knowledge of the Alabama sturgeon and its life cycle requirements. They maintain virtually nothing is known about where it breeds, spawns, and what they do after hatching.

Our Response: We certainly recognize that our knowledge base is limited with the Alabama sturgeon. However, that is why we have elected to use the best available scientific information on two of its closest relatives, the pallid and shovelnose sturgeon.

(38) *Comment:* One commenter, representing the ATRC, agrees that the

Service ''was justified by selecting the shovelnose and pallid species as surrogates to extrapolate the biological and physical information for the Alabama sturgeon.'' However, the commenter also suggests that there is little to no useful, documented information available to validate the information we used in the development of the PCEs. Specifically, the commenter questioned the lack of information related to the effects of river flow on spawning, spawning behavior, migration and aggregation at spawning sites, or egg deposition; substrate preferences; growth rates; and diet of the *Scaphirhynchus* species.

Our Response: We respectfully disagree with the commenter's belief about a lack of useful information on the shovelnose and pallid sturgeon. In 2007, the *Journal of Applied Ichthyology* published an entire volume dedicated to the biology and conservation of the three North American riverine sturgeons (Volume 23 Issue 4, Pages 289–538 (August 2007)). Within this one volume there are 30 papers devoted exclusively to describing embryonic development, genetic variability, larvae distribution and dispersal, habitat use of during different flow patterns, gonadal development, evaluating spawning site success, age and growth, distribution and movements, and diet composition of larval and adult sturgeons of the North American river sturgeons. Although we recognize that there are still considerable data gaps in our knowledge of these rare fishes, especially in terms of life history requirements, we believe it is fair to assume two characteristics that all North American sturgeon species (*Acipenser* and *Scaphirhynchus*) have in common; that they spawn over hard substrates in swift water and that they all migrate upstream to spawn. The Act requires us to use the best available scientific information available and we have done this throughout the rule and especially in the development of the PCEs.

(39) *Comment:* One commenter, representing the ATRC, commented that, ''high spring flows may not be essential to stimulation of sturgeon spawning runs.''

Our Response: Although there are differing opinions on which environmental cues are most important in stimulating sturgeon spawning movement, available literature generally agree on one factor; that all North American sturgeon spawn, or at least attempt to make spawning runs in the spring. In the Southeastern United States, this just happens to coincide with the wettest season and an extended photoperiod; therefore, we believe successful spawning cues are likely some combination of the above environmental factors, including high spring flows.

(40) *Comment:* One commenter, representing the ATRC, commented that Alabama sturgeon use similar movements as shovelnose and pallid sturgeon, including low flow areas. The commenter also stated that, ''low flow seems to be of little concern to the Alabama sturgeon, pallid sturgeon or shovelnose sturgeon.''

Our Response: We agree. The fish we have been tracking does occupy low flow areas at certain times. We do not, however, have information to suggest that this is a desired or preferred condition at other times of the year. In addition, we know that higher flows are required during specific times of the year to initiate spawning migrations and to allow larvae to develop.

(41) *Comment:* One commenter, representing the ATRC, made the following statement, ''the Endangered Species Act requires that critical habitat designation must be based on the best scientific and commercial data available.'' The commenter continued by stating the Service had failed in this regard by not referencing several publications.

Our Response: We respectfully disagree that we failed to use the appropriate references. The literature cited list is available from the Alabama Ecological Services Field Office (*See* **ADDRESSES**) and represents the best scientific data available relevant to the Alabama sturgeon and this designation of critical habitat.

(42) *Comment:* One commenter, representing the ATRC, describes in detail the chronology of the sonic-tagged Alabama sturgeon's movements and patterns from April 2007 through October 2008.

Our Response: We appreciate this summary of the movements of one fish, and have used it in the context of the rest of the best available information on the life history and biology of sturgeons.

Comments About Navigation and Dredging

(43) *Comment:* One commenter, representing the ATRC, stated that dredging could actually benefit the Alabama sturgeon in several ways. One of the examples used by the commenter is that dredging may actually create habitat by increasing water velocity in pool-like areas, thus increasing oxygen levels, cleaning the river bottom of silt and rotting leaves, and having a flushing effect on the river.

Our Response: We recognize that some sturgeon species have proven to be adaptive animals, especially in the Mississippi River, but we do not believe the evidence supports that dredging will actually increase available habitat, thereby increasing the recovery potential of the Alabama sturgeon.

(44) *Comment:* The ATRC urges the Service to avoid significant changes to current channel maintenance practices in the absence of specific, new information which provides a valid scientific basis to understand how and why it is necessary for conservation purposes.

Our Response: We review the operations and maintenance dredging procedures on the Alabama River every five years and we believe the information in the ''1994 White Paper'' is correct until new information provides a valid basis to changing our findings on channel maintenance and other issues. We will continue to use the best available science in making decisions about this and other trust resources.

Comments Related to the Economic Analysis

(45) *Comment:* Several commenters believe that the economic analysis dramatically understates the true potential for adverse economic impacts, some believe by a factor of as much as 100. Several of these commenters state that when there are uncertainties about the nature and breadth of regulatory impacts, the only way to identify the potential economic impact is to assume the worst-case scenario and determine economic impacts under those circumstances. Specifically, Troy University submitted an analysis that the rule has ''the potential to destroy approximately $900 million in local output and over $1.6 billion in the overall U.S. economy.''

Our Response: The commenters assume that a minimum water flow and a cessation of dredging activities in the Alabama River will result from critical habitat designation. They further assume that ongoing economic activities within the ACT Basin, such as navigation, hydropower operations, and industry production that relies on water transport (such as pulp and paper), will be curtailed following critical habitat designation. These eventualities appear improbable given the history of conservation efforts undertaken for the sturgeon to date, and the Service's current expectation for future actions. Nonetheless, Section 3 of the final economic analysis (FEA) recognizes that should the Service, in the course of future consultations on river flows in

extreme drought years, determine that higher flows are necessary to maintain suitable habitat conditions for sturgeon conservation, a variety of activities including commercial shipping, recreation, or hydropower may be impacted. In addition, a text box has been added to the economic analysis that describes the analysis submitted by the commenter.

(46) *Comment:* One commenter states that the benefits of critical habitat designation outweigh the risks to the sturgeon caused by the designation by an enormous margin. The commenter adds that potential benefits include the value to medical research of having a fish that has survived since the Jurassic Period, a fully restored commercial fishery, and an attraction for historical and nature-based tourism (which is important for poor communities' improvement).

Our Response: As described in Section 1 of the FEA, because the Service believes that the direct benefits of the critical habitat rule are best expressed in biological terms, the analysis does not quantify or monetize benefits. However, a qualitative discussion of the potential categories of benefits of sturgeon conservation and critical habitat designation is provided in Section 7 of the FEA.

(47) *Comment:* One commenter states that justification for not using input-output modeling is unsatisfactory because the use of input-output analysis is an accepted tool utilized extensively by Federal agencies.

Our Response: As described in Section 1 of the FEA, regional economic impact analysis (commonly using regional input/output models) can provide an assessment of the potential localized economic impacts of conservation efforts. Specifically, regional economic impact analysis produces a quantitative estimate of the potential magnitude of the initial change in the regional economy resulting from a regulatory action. These models rely on multipliers that represent the relationship between a change in one sector of the economy (*e.g.*, expenditures by recreators) and the effect of that change on economic output, income, or employment in other local industries (*e.g.*, suppliers of goods and services to recreators). These economic data provide a quantitative estimate of the magnitude of shifts of jobs, revenues, and taxes in the local economy. However, for this analysis, quantified impacts associated with sturgeon conservation efforts primarily result in additional costs incurred due to short term shutdowns of dredging operations to avoid the sturgeon. Remaining quantified impacts to economic activities dependent upon water management (*e.g.*, navigation or hydropower), water quality permitting (*e.g.*, pulp and paper mills), and other activities are made up entirely of administrative costs of section 7 consultations. Thus, measurable impacts of the type typically assessed with input-output models are not quantified in this analysis, and thus regional input-out modeling is not used. As stated above, Section 3 of the FEA recognizes that should the Service, in the course of future consultations on river flows in extreme drought years, determine that higher flows are necessary to maintain suitable habitat conditions for sturgeon conservation, a variety of activities including commercial shipping, recreation, or hydropower may be impacted. These impacts may in turn generate regional economic effects.

(48) *Comment:* One commenter states that the DEA primarily gives consideration to agency costs as measured in staff time for engagement, but ignores third party costs.

Our Response: The FEA explicitly considers potential impacts to all impacted parties, whether they are Federal agencies, local governments, or private parties. Exhibit 1–2 of the FEA presents the administrative cost estimates broken down into Service, Federal Agency, and third party costs. Section 3 of the FEA discusses potential impacts that could occur related to recreators, homeowners, and the navigation industry, among others, should additional river flows be required for the sturgeon. Section 4 of the FEA discuss potential impacts on NPDES permitees, such as the pulp and paper industry, to the extent that Alabama sturgeon encourages out-of-compliance NPDES-permitted facilities to come into compliance sooner than would already have occurred absent the sturgeon.

(49) *Comment:* One commenter states that IEc has found less than one percent of species (out of 113 endangered species analyses) actually would harm the economic environment (which was the Port of Los Angeles).

Our Response: The economic analyses of critical habitat developed by the Service, including those developed by the Service's economics consultants, are not intended to present a determination of economic harm. Instead, these analyses are intended to provide objective information on potential economic and other costs of designation, which the Secretary can then use in addressing the requirements of section 4(b)(2) of the Act. The commenter did not present any support for the conclusion that only one percent of the studies performed have found ''harm'' to the economic environment. However, the Service notes that the reports produced by IEc and other economics consultants have addressed a wide-range of potential economic changes, both regional and national in scope, potentially resulting from designation of critical habitat.

(50) *Comment:* One commenter states that the DEA may not meet recommended OMB standards because it does not consider regional growth rates or market conditions associated with potentially impacted industries.

Our Response: The U.S. Office of Management and Budget's (OMB) guidelines for conducting economic analysis of regulations direct Federal agencies to measure the costs of a regulatory action against a baseline, which it defines as the ''best assessment of the way the world would look absent the proposed action'' (U.S. Office of Management and Budget, ''Circular A–4,'' September 17, 2003, available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*). In other words, the baseline includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the listing of the species. Impacts that are incremental to that baseline (*i.e.*, occurring over and above existing constraints) are attributable to the proposed regulation, in this case the designation of critical habitat. As recommended by OMB, the baseline incorporates, as appropriate, trends in market conditions, implementation of other regulations and policies by the Service and other government entities, and trends in other factors that have the potential to affect economic costs and benefits, such as the rate of regional economic growth in potentially affected industries. In this analysis, the anticipated impacts are primarily administrative, with some impacts associated with temporary dredging shutdowns. The analysis discusses the way in which these impacts relate to the existing baseline conditions.

(51) *Comment:* One commenter states that there will be little or no new economic development if the critical habitat is accepted as proposed.

Our Response: The commenter presents no evidence to support this statement.

(52) *Comment:* One commenter states that the counties surrounding the proposed critical habitat are economically depressed, disproportionately African-American, and in need of every possible strategic

advantage to attract new jobs. Designation would therefore violate the Council of Environmental Justice's definition of environmental justice, in addition to imposing permanent economic impacts from which the region will never be able to recover.

Our Response: Section 2 of the FEA presents demographic statistics on the potentially affected region. The critical habitat region does exhibit higher than average unemployment and poverty rates, and has higher minority populations than areas outside the region. Note that, as in Comment 45, the commenter assumes that ongoing economic activities within the ACT Basin, such as navigation, hydropower operations, and industry production that relies on water transport (such as pulp and paper), will be curtailed following critical habitat designation. These eventualities appear improbable given the history of conservation efforts undertaken for the sturgeon to date, and the Service's current expectation for future actions. All quantified incremental impacts of critical habitat designation are administrative impacts of section 7 consultation, and would not be expected to disproportionately affect socio-economically disadvantaged groups.

(53) *Comment:* One commenter states that the DEA fails to consider certain major impacts on the USACE's channel maintenance activities, limits on industrial wastewater discharges, and limits on land use activities such as agriculture and silviculture.

Our Response: The FEA considers impacts to maintenance dredging, industrial wastewater discharge, agriculture, and silviculture in Sections 4 and 5.

(54) *Comment:* One commenter states that additional flow requirements could have large economic impacts associated with navigation and hydropower generation throughout the basin. Associated potential impacts would depend on the magnitude of the requirement, timing, and prevailing drought-water budget interactions.

Our Response: We agree. *See* Comment 45.

(55) *Comment:* Several comments relate to barge traffic within the river. One commenter states that access to reliable water transportation provides a competitive advantage for the recruitment of new industry for this region and cannot be ignored. Another states that the use of barge transport for receiving fuel oil at their dock at the 69th river mile saves them approximately $1 million each year in transportation costs. While another states that the DEA seriously underestimates the value of barge transportation to the region of the State, which is in a socio-economically disadvantaged area.

Our Response: Sections 3 and 5 of the FEA discuss the water transportation industry in the Alabama River, and provide information on the value of the industry to the region based on data produced by the Coosa-Alabama River Improvement Association. However, the analysis does not anticipate large impacts on the barge transportation industry. Regarding the stated socio-economic concerns, additional demographic information has been added to the FEA in Section 2.

(56) *Comment:* One commenter states that Carters Lake and Lake Allatoona should be included in any discussions and analysis regarding the effects of upstream reservoir storage and flows in the Alabama River.

Our Response: Carters Lake and Lake Allatoona have been incorporated into the discussion of potential impacts in Section 3 of the analysis.

(57) *Comment:* One commenter states that an economic analysis on the APC FERC relicensing efforts should be conducted after consultation is complete in order to incorporate any agreed-upon minimum flow or drought plan.

Our Response: The timeframe for publication of the critical habitat rule was required by the court and precedes the completion of the relicensing process for APC. We would agree that an analysis of impacts once that process is complete could provide additional information.

(58) *Comment:* One commenter states that the DEA assumes the only additional costs to the USACE will be costs associated with consultation. The commenter adds that the USACE does incur shutdown costs without the critical habitat designation, and that within-bank disposal of dredged materials could also be affected.

Our Response: Section 5 of the FEA discusses that impacts to the USACE are anticipated to include annual compliance costs incurred by the USACE to communicate and coordinate their upcoming activities to the Service at the beginning of each dredging season, as well as costs incurred by the USACE and its contractors related to temporary dredging shutdowns on average once per year between 2009 and 2028. Because (1) the Service states in the critical habitat rule that only the dredging of consolidated materials should result in a ''may affect'' determination for sturgeon critical habitat and (2) the Service has confirmed through informal consultation with USACE every five years since 1994 that dredging of unconsolidated sediment will not adversely affect the sturgeon, the FEA finds that annual maintenance dredging of the Federal navigation channel in the Alabama River is not expected to be affected by the critical habitat rule, other than to continue to result in a five-year review of USACE dredging activities. With regard to potential impacts to within-bank disposal, Section 5.3.1 discusses that during the 2008 five-year review, the Service did request that the USACE move one disposal site from a river mouth to another location in the channel, with limited impacts on operations.

(59) *Comment:* One commenter states that the dredging shutdown costs for 2007 and 2008 ($88,800 and $44,400) appear to be industry costs, and that they should be replaced with $25,620 and $14,011 for 2007 and 2008, respectively.

Our Response: At the time of the DEA, these USACE costs were not available. These have been incorporated into Section 5 of the FEA and total estimates have been revised accordingly.

(60) *Comment:* One commenter states that it is reasonable to expect that dredging shutdowns will increase in frequency and duration as the sturgeon population recovers. In addition, the commenter states that it is also reasonable to expect that consultations will increase in frequency as the sturgeon population recovers.

Our Response: No information is available about the rate at which the sturgeon will recover or whether such recovery will overlap with areas in which dredging takes place, or if fish will be tagged, so forecasting increased dredging shutdown frequency is not possible. The Service points out that a single tagged Alabama sturgeon currently exists. Unless additional sturgeon can be found and tagged, we do not expect more dredging shutdowns in the future. As the future population of Alabama sturgeon is not known, this analysis uses the recent past as an indicator of likely future rates of shutdowns. Nonetheless, a caveat has been added to Section 5 of the FEA that describes the commenter's concern.

(61) *Comment:* One commenter states that there are economic uncertainties involved in future consultations that should be captured as additional potential impacts. For example, FWS made recommendations for additional conservation measures following the critical habitat designation for the Gulf sturgeon, including the purchase and use of hydrophones to monitor the presence of tagged Gulf sturgeon.

Our Response: The FEA acknowledges that uncertainty exists with regard to future conservation efforts likely to be undertaken for sturgeon. No specific additional recommendations have been identified that would pertain to sturgeon critical habitat.

Summary of Changes From Proposed Rule

1. We have changed the first PCE from the original description in our original proposal (73 FR 30361; and explained this change in a subsequent revised proposed rule at 73 FR 79770) because we have determined that the original wording failed to indicate that the water flow needs of the species are relative to the season of the year. Please refer to the *Primary Constituent Elements (PCEs) for the Alabama Sturgeon* section below for specific wording of the first PCE.

2. We have further clarified a portion of the fifth PCE to:

''dissolved oxygen levels not less than 5 mg/L (5 ppm), except under extreme conditions due to natural causes or downstream of existing hydroelectric impoundments, where it can range from 5 mg/L to 4 mg/L (5 ppm to 4 ppm);

3. We added a few recommendations in the ''Special Management Considerations'' section. These recommendations encourage finding alternative ways of increasing the amount of free-flowing habitat in the Alabama River that allow sturgeon and other migratory species to move freely between feeding, resting, and spawning grounds.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the features that are essential to the conservation of the species, and be included only if those features may require special management consideration or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found those physical and biological features essential to the conservation of the species). Under the Act and our implementing regulations, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We derive the specific PCEs for the Alabama sturgeon from the biological needs of this species as described in the Critical Habitat section of the proposed rule to designate critical habitat for the Alabama sturgeon published in the **Federal Register** on May 27, 2008 (73 FR 30361), along with subsequent changes we describe above in the Summary of Changes from Proposed Rule section.

Space for Individual and Population Growth and for Normal Behavior

All river sturgeons (*Scaphirhynchus* spp.) are migratory and may migrate hundreds of kilometers to spawn. Generally, sturgeons migrate to optimize feeding and reproductive success. Downstream migrations are associated with feeding and upstream migrations are usually associated with spawning (Auer 1996, p. 153; Bemis and Kynard 1997, p. 175). The newly hatched larvae of other river sturgeon are free-floating and may drift hundreds of kilometers before settling to a benthic (bottom) juvenile existence. Therefore, connectivity and availability of spawning areas and larval, juvenile, and adult feeding and growing habitats are necessary for the conservation of the species.

Based on collection records, the species is known to inhabit the main channel of large coastal plain rivers of the Mobile River Basin. Specimens have been taken over a variety of substrates, including sand, gravel, and mud, from 6 to 14 m (20 to 46 ft) deep (Williams and Clemmer 1991, p. 26). The USACE identified 30 locations in the Alabama River where 58 Alabama sturgeon were reportedly captured between 1950 and 1998, and documented channel morphology and substrate types at 12 of the capture locations during low flow conditions. Substrates associated with these capture sites included sand, gravel, and limestone outcrops. All capture locations downstream of Claiborne Lock and Dam were either on or within 300 m (984 ft) of a sandbar.

Most historical and recent sturgeon capture sites are at or near features presumably associated with feeding, reproduction, or refugia, and include rock walls, channel training devices, deep pools, mussel beds, and/or stable sand and gravel bottoms (Burke and Ramsey 1985, p. 53; Mayden and Kuhajda 1996, p. 257; Hartfield and Garner 1998, p. 4). The presence of mussel beds represents stable channel habitats with high aquatic invertebrate diversity and density that are likely important feeding areas for sturgeon; deeper holes may be used as thermal refugia during times of low flow and warmer temperatures (Hartfield and Garner 1998, p. 5).

Data collected from a radio-tagged Alabama sturgeon, released in 1985 near Millers Ferry Lock and Dam on the Alabama River and tracked for 4 months, showed that its preferred position was in swift current at a depth of 7.7 to 12.3 m (25 to 40 ft), but never at the deepest part at any location except where bottom contour was uniform (Burke and Ramsey 1985, p. 32). Irwin *et al.* (2005, p. 5) and Kynard *et al.* (2007, p. 369) documented that adult shovelnose sturgeon are more active at night. This type of behavior was also observed in juvenile shovelnose sturgeon (Kynard *et al.* 2007, p. 369), and a similar pattern is currently being observed in the Alabama sturgeon collected in 2007 that is being tracked in the lower Alabama River (ADCNR and Service unpublished data 2007, 2008). During daylight hours in the summer of 2007, this sturgeon remained in the deeper, flowing portions of the channel. However, during the late afternoon and early evening hours, the sturgeon moved into shallower habitats directly adjacent to a small perennial tributary. We have no evidence that the sturgeon moves into these tributaries; it may be taking advantage of cooler water found at the interface between the tributaries and the main stem of the river. The amount of time this tagged fish spent in these areas indicates these areas are important for feeding or for providing thermal refugia during the warmer summer months.

Food

Reports indicate that the species is an opportunistic bottom feeder (Mayden and Kuhajda 1996, p. 257; Williams and Clemmer 1991, p. 26; Burke and Ramsey 1985, p. 35). Keevin *et al.* (2007, p. 500) conducted a stomach content analysis on 12 Alabama sturgeon individuals from museum collections and found aquatic insects and fish to be the predominant food items. This finding suggests a diet quite similar to the diets of the pallid and shovelnose sturgeons described by Gerrity *et al.* (2006, p. 606) and Hoover *et al.* (2007, p. 494). Except for the absence of fish in the diet of shovelnose sturgeon, all three species tended to feed on similar items, primarily aquatic insects. The insects identified in these studies are found over a variety of substrates, including soft and hard rocky bottoms; therefore, protection of most shallow-water habitat (shoals, gravel or sand bars) is essential to maintaining an acceptable food base. A distinct difference observed by Keevin *et al.* (2007, p. 502) in the diet of the Alabama sturgeon was the presence of ceratopogonids (biting midges) and siphlonurids (mayfly family). These small, aquatic larvae are very active, strong swimmers that tend to occupy the water column or areas near the surface (Keevin *et al.* 2007, p. 502), indicating that the sturgeon may be a mid-water column feeder. Irwin *et al.* (2005, p. 39) found that juvenile shovelnose sturgeon overwhelmingly preferred feeding in sandy substrates and actively avoided gravel areas. It is unknown if this behavior is displayed by the Alabama sturgeon, but 2007 tracking data suggest that the species may rest in the deeper, fast-flowing areas during the day and feed in shallow, sandy shoal areas at night (ADCNR and Service unpublished data).

Water Quality

Generally, most species of sturgeon are not as tolerant of low oxygen levels as other fishes; however, because of their benthic lifestyles, they are more likely to encounter areas with low levels of dissolved oxygen (Secor and Gunderson 1998, p. 611). Temperature and dissolved oxygen levels can affect sturgeon survival and growth, with early life stages being more sensitive to these variables than the adult stage (Secor and Gunderson 1998, p. 604). High levels of dissolved oxygen, as well as acceptable levels of other water quality parameters, are necessary for egg maturation and hatching, and larval and juvenile

development. Poor water quality has even been linked to hermaphrodism in shovelnose and pallid sturgeon (U.S. Environmental Protection Agency (USEPA) 2007, p. 4).

There are currently more than 1,600 National Pollutant Discharge Elimination System (NPDES) permits issued within the Alabama River downstream of the Fall Line, which could impact sturgeon habitat. It is possible that some of these point-source discharges, along with other non-point sources of pollutants, could produce pollutant concentrations that may be harmful to the Alabama sturgeon. At the time of listing in May 2000, we believed that State water quality standards (which the State adopted from the national standards set by the USEPA) were protective of the Alabama sturgeon as long as discharges were within permitted limits and enforced according to the provisions of the Clean Water Act (Biggins 1994, p. 4). These water quality requirements were established with the intent to protect all aquatic resources within the State of Alabama and were presumed to be protective of the Alabama sturgeon. However, the Service is currently in consultation with the USEPA to evaluate the protectiveness of criteria approved in USEPA's water quality standards for Alabama sturgeon and other threatened and endangered species and their critical habitats as described in the Memorandum of Agreement our agencies signed in 2001 (66 FR 11201, February 22, 2001). Other factors that can potentially alter water quality are droughts and periods of low flow, non-point source runoff from adjacent land surfaces (*e.g.,* excessive amounts of nutrients, pesticides, and sediment), and random spills or unregulated discharge events. This could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Therefore, adequate water quality, quantity, and flow are essential for normal behavior, growth, and viability during all life stages of the sturgeon, including embryo development and hatching, and larval and juvenile development.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The Alabama sturgeon is believed to reach sexual maturity between 5 and 7 years of age. Spawning frequency of both sexes is likely influenced by food supply and fish condition, and may occur every 1 to 3 years. Similar to other river sturgeon, the Alabama sturgeon is believed to migrate upstream during the late winter and spring to spawn. These movements are likely extensive and cover long distances.

The capture of 12 individuals (including several gravid females) during a single collection trip near the mouth of the Cahaba River on March 21, 1969, suggests directional movements during the spawning season (Williams and Clemmer 1991, p. 27). Gravid females with ripe eggs have also been collected during late March, April, and early May, which may indicate a prolonged spring spawning or yearly variations in the occurrence of preferred spawning temperatures. Actual timing of spawning during this period may also vary depending on water temperature and river discharge. All sturgeon species produce eggs that are adhesive and require a current for proper development. Although specific locations at which eggs have been deposited have not been identified for the Alabama sturgeon, they are presumably similar to those of other river sturgeons, where eggs are deposited on hard bottom substrates such as bedrock, armored gravel, or channel training works in deep water areas, and possibly in some larger tributaries, such as the Cahaba River (Burke and Ramsey 1985, p. 53).

Although no information about larval development exists for the Alabama sturgeon, we assume that the Alabama sturgeon may have needs similar to those of other river sturgeons, which require highly oxygenated, long stretches of free-flowing water for development. The larvae are planktonic, drifting with river currents for 12 to 13 days after hatching, and exhibit a swim-up and drift behavior while floating in currents (Kynard *et al.* 2007, p. 365). Research indicates that pallid sturgeon larvae can drift more than 200 km (124 mi) during the first 11 days of the larval life stage, depending on water velocities, before settling to the benthic environment (Braaten and Fuller 2007, p. 1). It is unclear, at present, whether Alabama sturgeon require distances comparable to those exhibited by pallid sturgeon, but the life history strategy is thought to be the same. A further reduction in the distance of free-flowing habitat currently available would likely be detrimental to the sturgeon.

Riverine Flows and Channel Stability

Flows in the Mobile River Basin have been substantially altered from natural conditions due to the construction and operation of the large number of impoundments. Additionally, the river's temperature, biogeochemical processes that would have occurred in the absence of the dams, and pollution assimilation capabilities have also been altered. Flowing water provides a means for transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, and diluting pollutants, as well as transporting and suspending developing sturgeon embryos and larvae.

The quality of water, which comprises the sturgeon's chemical habitat, is directly related to the volume of water present in the river. It affects sturgeon behavior, growth, and viability in all life stages. We have changed the first PCE from its original description because we have determined that the original wording failed to indicate that the flow needs of the species are relative to the season of the year. For example, sturgeon likely need a higher flow in the spring to successfully spawn than the 131.4 cms (4,640 cfs) flow indicated in the original PCE. Also, we have determined that it is more descriptive and helpful to potential action agencies to describe the habitat needs of the species in relation to flow seasonality and how seasonal flows allow for maintenance of all life stages. Lastly, we have determined that while we believe flows lower than 131.4 cms (4,640 cfs) may involve adverse effects to the species (and therefore we will continue to recommend consultation), depending upon other factors, lower flows may not result in measurable adverse effects. Therefore, focusing on 131.4 cms (4,640 cfs) in the PCE fails to account for the complexity of variables that need to be analyzed to determine effects to the sturgeon.

Aquatic life, including fish, requires acceptable levels of dissolved oxygen. The type of organism and its life stage determine the level of oxygen required. Generally, among the fish, cold water species are the most sensitive, with young life forms being most critical. Dissolved oxygen levels of 3 mg/L (3 ppm) and water temperatures of 22–26 °C (72–79 °F) appeared to be lethal for juvenile Atlantic sturgeon (Secor and Gunderson 1998, p. 607). Temperature, another water quality parameter, is related to dissolved oxygen. The amount of dissolved oxygen that is present in water (the saturation level) depends upon water temperature. As the water temperature increases, the saturated dissolved oxygen level decreases. The more oxygen there is in the water, the greater the assimilative capacity (ability to consume organic wastes with minimal impact) of that water (Pitt 2000, pp. 6–7). Biochemical oxygen demand (BOD) is the oxygen that would be required to stabilize the waste after its discharge into a body of water. Wastewater discharges that have a high BOD will have a much greater

detrimental effect on stream dissolved oxygen during critical summer months than they would during colder months. Summer months also have lower stream flow rates, which worsens the problem by further reducing the water's assimilative capacity (Pitt 2000, pp. 6–7). In the worst case scenario, flows should be sufficient to meet State water quality standards, which ensure at least 4 mg/L (4 ppm) of dissolved oxygen during low-flow periods and below hydropower operations, and 5 mg/L (5 ppm) in other river reaches.

During 2007 and 2008, the Alabama River Basin experienced the worst drought ever recorded. Although this drought is currently recognized as the worst drought in modern history, some researchers believe that it may not have been that unusual (B. Erhardt, USACE Meteorologist, pers. comm. 2008). Using bald cypress (a long-lived species) growth rings as an indication, the 2007–08 hydrologic period may have actually been more normal over the last 1,000 years than conditions experienced over the last 40 years (which may have been exceptionally wet). Therefore, considering that sturgeon species have survived a range of hydrologic conditions over the years, we believe sturgeon are adapted to these periodic low-flow conditions, if poor water quality (from the Alabama River reservoirs) doesn't further exacerbate the environmental stress levels to the sturgeon. Although the sturgeon we are currently tracking survived the 2007–08 drought, we do not believe that the Alabama sturgeon is adapted to survive extended drought periods where water quality is compromised by excessive discharges that the river is unable to assimilate. More specifically, as described above, low-flow conditions affect the chemical environment occupied by the fish, and extended low-flow conditions coupled with higher pollutant levels would likely result in behavior changes within all life stages, but could be particularly detrimental to early life stages (*e.g.*, eggs, larvae, and juveniles).

Stable river bottoms also are required by the sturgeon. The presence of stable river bottoms has been associated with the recent and historical captures of sturgeon in the Alabama and Tombigbee Rivers. Hartfield and Garner (1998, p. 6) documented the presence of stable substrates located between dredge and disposal sites in the lower Alabama River. These included areas with stable sand and gravel river bottoms, and bedrock walls. The presence of mussel beds and a diverse and dense insect community provide an indication that channel bottoms are relatively stable (Hartfield and Garner 1998, p. 6). As mentioned above, the preferred diet of the sturgeon is aquatic invertebrates; therefore, the presence of mussel beds may be an important indicator of suitable sturgeon feeding habitat.

Primary Constituent Elements (PCEs) for the Alabama Sturgeon

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs laid out in the appropriate quantity and spatial arrangement) within the geographical area known to be occupied by the Alabama sturgeon at the time of listing that are essential to its conservation and which may require special management considerations or protections. Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that Alabama sturgeon's PCEs are:

1. A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality of discharge over time) necessary to maintain all life stages of the species in the riverine environment, including migration, breeding site selection, resting, larval development, and protection of cool water refuges (*i.e.*, tributaries).
2. River channel with stable sand and gravel river bottoms, and bedrock walls, including associated mussel beds.
3. Limestone outcrops and cut limestone banks, large gravel or cobble such as that found around channel training devices, and bedrock channel walls that provide riverine spawning sites with substrates suitable for egg deposition and development.
4. Long sections of free-flowing water to allow spawning migrations and development of embryos and larvae.
5. Water temperature not exceeding 32 °C (90 °F); dissolved oxygen levels not less than 5 mg/L (5 ppm), except under extreme conditions due to natural causes or downstream of existing hydroelectric impoundments, where it can range from 5 mg/L to 4 mg/L (5 ppm to 4 ppm); and pH (a measure of acidity) within the range of 6.0 to 8.5.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features essential to the conservation of the species that may require special management consideration or protections. It is recognized that numerous activities in and adjacent to the unit designated as critical habitat, as described in this final rule, may affect one or more of the PCEs found in that unit. These activities include, but are not limited to, those listed in the Application of the ''Adverse Modification'' Standard section as activities that may destroy or adversely modify critical habitat. We summarize here the primary threats to the physical and biological features essential to the conservation of the species.

Water quality, as discussed in the Application of the ''Adverse Modification'' Standard section, can influence all life stages of the sturgeon. Water pollution and changes in water quality can originate from either non-point or point source discharges. Non-point source pollution is ubiquitous in the Mobile Basin and can originate from a variety of land use practices (such as livestock grazing, row crop farming, silviculture, and residential development). The impacts from nearly all non-point source pollutant sources can be managed by implementing the appropriate best management practices. This may include creation and maintenance of riparian buffers, and control of soil loss and runoff from adjacent lands. Point source pollution typically originates from industrial and municipal discharges, but may include any discharge that originates from a single point. Point source pollution can be managed by ensuring that NPDES permitted discharges are within compliance at all times. This requires proper water quality monitoring and record keeping, and ensuring that enough flow is present in the river to assimilate the volume of material that is being discharged.

The Service should be consulted before actions that are Federally funded, authorized, or permitted are undertaken that may disturb areas upstream of areas known to support sturgeon, including perennial streams that may provide critical thermal refuges to the sturgeon at the interface with the main channel, especially during times when river flows are at abnormally low levels (*e.g.*, during droughts). Therefore, prior to channel-disturbing activities, these areas should be identified and precautions should be taken to ensure that the integrity of these areas is maintained. Minimizing the effects of navigational dredging and channelization (past evidence of which can be seen throughout the historical range of the sturgeon) can be accomplished by avoiding the removal of consolidated bed material and rock walls, and consulting with the Service on proper disposal areas.

Long sections of free-flowing habitat, as discussed in the fourth PCE, are necessary for spawning migrations and

development of larvae. Although we do not have specific information on the exact length necessary for the Alabama sturgeon to successfully migrate and develop, the best estimate we can make, from information on the pallid and shovelnose sturgeon, is that it could be greater than 150 km (93 mi). We also recognize that although there are 524 river kilometers (326 river miles) in the current designation, there may not be long enough stretches of free-flowing habitat to completely meet this requirement, but as we discussed under comment #10, this is the best remaining habitat we have left. We will continue to work with partners and seek every opportunity (*e.g.*, fish passage) to address these issues and work towards increasing the length of free-flowing habitat that currently exists in the Alabama River.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available to designate critical habitat. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). The Alabama sturgeon is extremely rare. Despite extensive and intensive efforts in the decade prior to its listing, only eight Alabama sturgeon were captured, or reported captured and released. All river sturgeons are migratory and may migrate hundreds of kilometers to spawn, and newly hatched larvae may drift hundreds of kilometers before settling. Therefore, connectivity of spawning, juvenile, and adult feeding and developmental habitats is necessary for the conservation of the species.

We began our analysis by evaluating the Alabama sturgeon in the context of its distribution throughout the historical range to determine what portion of the range must be included to ensure conservation of the species. We considered several factors in this evaluation: (1) Inclusion of reaches that provide the highest likelihood of embryo and juvenile development, (2) inclusion of reaches that contain suitable spawning habitat, and (3) inclusion of areas that provide protection of the species during low flow periods and other catastrophic events.

The historical range of the Alabama sturgeon included nearly every major basin in the Mobile River basin downstream of the Fall Line, comprising nearly 1,600 km (994 mi) of riverine habitat in the Mobile River Basin in Alabama and Mississippi. There are records of Alabama sturgeon from nearly all the major rivers in the Mobile River Basin below the Fall Line, including the Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba Rivers (Burke and Ramsey 1985, p. 1). However, over the last century, the species has disappeared from at least 85 percent of its historical range, and since the 1960s has experienced a significant decline in the remaining range.

Recent collections (since 1990) of the Alabama sturgeon are confined to the lower Alabama River from its confluence with the Tombigbee River upstream to R.F. Henry Lock and Dam, including the lower Cahaba River (Rider and Hartfield 2007, p. 492). The entire historical range of the Alabama sturgeon is now controlled by a series of more than 25 large locks or dams. These manmade structures have resulted in a series of impoundments that are interspersed with free-flowing reaches of varying lengths. Within the Alabama sturgeon's historical range there are three dams on the Alabama River (completed between 1969 and 1971), two on the Black Warrior River (completed by 1971), and six on the Tombigbee River (completed between 1955 and 1985). These 11 dams alone have impounded and fragmented more than 970 km (602 mi) of riverine habitat once occupied by sturgeon. Prior to construction of these structures, sturgeon could move freely between feeding areas, from feeding areas to sites that were suitable for spawning and development of embryos, and larvae had abundant free-flowing riverine habitat to develop.

The locks and dams that impound the river constitute barriers to sturgeon passage. Although fish species that occupy the middle of the water column (*e.g.*, shad, catfishes, paddlefish) could, and do, pass through the locks while they are being operated, evidence suggests that sturgeon do not pass through the lock chambers during normal lockages. Most adult sturgeons, including the Alabama sturgeon, are benthic (bottom-dwelling) cruisers, and are not likely to move up in the water column to scale physical hurdles (Cooke *et al.* 2002, p. 108). The lock chambers at Millers Ferry and Claiborne Locks and Dams have upper and lower sills which form a rather large hurdle (about 9 m (30 ft) above the river floor at the upper end of Miller Ferry) for sturgeon moving upstream and downstream. However, recent work with shortnose sturgeon could help develop promising new strategies for Alabama sturgeon fish passage. For instance, at the Pinopolis Project (at the base of Lake Moultrie on the Cooper River), cooperators have been attempting to move sturgeon upstream via the navigation locks. Although fish have not yet been shown to move directly through the locks, researchers have manually captured sturgeon below the dam and then moved them upstream of the lock, after which they migrated to areas approximately 161 km (100 mi) upstream where spawning had been documented (Finney *et al.* 2006).

With migration routes impeded, isolated subpopulations of Alabama sturgeon are unable to successfully recruit adequate numbers to replenish the population. Reduced numbers of recruited sturgeon and surviving adult fish can become more vulnerable to localized declines in water and habitat quality caused by hydropower releases, local riverine and land management practices, or by polluted discharges. It is unlikely that Alabama sturgeon habitat and life cycle requirements can be met in long stretches of low flow, such as those that exist in the impounded areas of the river, where decreased flows typically cause silt and other fine sediments to accumulate over bottom habitats, creating unsuitable conditions for spawning, feeding, and larval growth and development.

The Alabama sturgeon is considered extirpated from the upper Alabama, Black Warrior, Tombigbee, Coosa, Tallapoosa, Mobile, and Tensaw Rivers. The Upper Alabama is isolated by Robert F. Henry Lock and Dam, and this reach of the river is essentially impounded to the confluence of the Coosa and Tallapoosa Rivers, and does not contain appropriate habitat for the conservation of the Alabama sturgeon.

Sturgeon have not been collected from the Black Warrior, Coosa, Tallapoosa, or Tombigbee Rivers in more than 30 years. With the exception of the extreme lower Tombigbee River, all of these areas are isolated from currently occupied river reaches, and their riverine habitats are impounded and highly fragmented by multiple large river dams. Although some isolated areas within these drainages may contain some of the appropriate habitat features for Alabama sturgeon, their limited extent and the lack of continuity or accessibility to other habitats limits their value to the species.

The Mobile, Tensaw, and lower Tombigbee Rivers are currently accessible to Alabama sturgeon; however, there have been no confirmed collections of the species in more than 20 years. In addition, the natural hydrograph of the lower Mobile Basin has been radically altered by multiple

navigation and hydropower dams on the Tombigbee River, and the flows are seasonally highly variable. These areas may be occasionally used or visited by subadult or adult Alabama sturgeon; however, there is no recent evidence that this is occurring and little historical evidence of such use. Although some habitat features occur in these river reaches, their value in conservation of the species is not known.

At the time of listing, we considered the Alabama River from south of Miller's Ferry Lock and Dam to the confluence of the Tombigbee River to be occupied. Shortly after publication of the listing rule, an Alabama sturgeon was captured and released at river mile 8.5 in the Cahaba River. This capture of an adult sturgeon indicated that this area also was occupied at the time of listing, given that the fish could not have reached this area from other sections of the river due to the lock and dam arrangement (*see* the Riverine Flows and Channel Stability section), and would have been present at the time the rule was published in the **Federal Register** (May 5, 2000). Given the fish's proximity to the mouth of the Cahaba River and the lack of barriers with the Alabama River section located between R.F. Henry Lock and Dam and the Millers Ferry Lock and Dam, we believe the fish are likely to use all of these areas, and, therefore, we consider these areas occupied at the time of listing. There is some evidence of past upstream spawning runs in the Cahaba River as well (Williams and Clemmer 1991, p. 27). Based on historical information and recent collections, we consider all of the following areas to have been occupied at listing, as well as currently occupied: The Alabama River from R.F. Henry Lock and Dam downstream to the confluence of the Tombigbee River, and the Cahaba River from its confluence with the Alabama River upstream to U.S. Highway 82, which is close to the Fall Line at Centreville, Alabama. Given the lack of appropriate habitat elsewhere within the species' historical range, we conclude that this final designation should include all habitat occupied at the time of listing.

Once we determined that the proper scale of the critical habitat designation should cover the area occupied by the species, we assessed the critical life history components of Alabama sturgeon as they relate to habitat. Alabama sturgeon use the rivers for spawning, larval and juvenile feeding and development, adult resting, feeding, and staging, and to move between the areas that support these components. Therefore, all areas meeting these requirements were considered for inclusion.

We then investigated the habitat types that support these life history components and where these habitat areas are located. We evaluated empirical data (including that gathered from recent radiotelemetry), recent channel bathymetry data (collected by the USACE), as well as published and unpublished literature. These habitat components are described in the *Primary Constituent Elements* section of this final rule.

To determine which areas should be designated as critical habitat, we then evaluated where the necessary physical and biological features of Alabama sturgeon habitat occur within the areas occupied at the time of listing. Detailed location data are included in the unit description in the Final Critical Habitat Designation section of this final rule. We have determined that these areas occur from the Alabama River, at its confluence with the Tombigbee River, upstream to R.F. Henry Lock and Dam. This also includes the Cahaba River upstream to U.S. Highway 82 near the Fall Line in Bibb County. All of these areas support one or more of the PCEs and are accessible to sturgeon (*i.e.*, not entirely blocked by dams). All life stages are associated with flowing waters and other features characteristic of free-flowing riverine habitats. Nearly the entire length of the Alabama and Cahaba River currently meet these requirements. This area is being designated as critical habitat to ensure adequate protection of spawning sites, habitat needed for juvenile development, and movement of adult sturgeon to and from spawning areas.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures, because such lands lack PCEs for the Alabama sturgeon. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined to be occupied at the time of listing and contain, or have the potential to contain, sufficient PCEs to support life history functions essential for the conservation of the species.

The Alabama and Cahaba Rivers Critical Habitat Unit was designated based on sufficient PCEs being present to support Alabama sturgeon life processes. Some segments of this unit contain all PCEs and supported multiple life processes. Some segments contained only a portion of the PCEs necessary to support the Alabama sturgeon's particular use of that habitat.

Final Critical Habitat Designation

We are designating one contiguous section of the Alabama River and a portion of the lower Cahaba River as one critical habitat unit for Alabama sturgeon. The areas we describe below constitute our current best assessment at this time of areas that meet the definition of critical habitat for the Alabama sturgeon. The single unit we are designating as critical habitat is the Alabama River from its confluence with the Tombigbee River, Clarke and Baldwin Counties, Alabama, upstream to R.F. Henry Lock and Dam, Autauga and Lowndes Counties, Alabama; and the Cahaba River from its confluence with the Alabama River upstream to U.S. Highway 82 near the Fall Line in Bibb County, Alabama. Table 1 shows the occupied unit, land ownership, and approximate area.

TABLE 1—ALABAMA STURGEON FINAL CRITICAL HABITAT UNIT: OCCUPANCY, SIZE, AND LAND OWNERSHIP

Critical habitat unit	Occupied at time of listing	Currently occupied	Size of unit in kilometers (miles)	Land ownership by type
Alabama and Cahaba Rivers	yes	yes	524 (326)	State.

We present a brief description of the unit and reasons why it meets the definition of critical habitat for the Alabama sturgeon, below.

Unit: Alabama and Cahaba Rivers, Alabama

The critical habitat unit encompasses 524 km (326 mi) of river channel. The portion of river channel in the Alabama River extends 394 km (245 mi) from its confluence with the Tombigbee River, Baldwin and Clarke Counties, Alabama, upstream to R.F. Henry Lock and Dam, Autauga and Lowndes Counties, Alabama; and the portion of river channel in the Cahaba River extends 130 km (81 mi) from its confluence with the Alabama River, Dallas County, Alabama, upstream to U.S. Highway 82, Bibb County, Alabama. The Alabama and Cahaba Rivers are the last known areas that still support the sturgeon, and both were occupied at the time of listing. This was recently confirmed by the 2007 collection of an individual from the Alabama River below Claiborne Lock and Dam, and the 2000 collection of an individual sturgeon from the lower Cahaba River (ADCNR pers. comm. 2007). Although the Alabama River, within this unit, contains two physical barriers (Claiborne and Millers Ferry Locks and Dams), it has several PCEs and has the potential to support all of the PCEs to sustain this extremely rare fish. The single critical habitat unit includes, for each river or stream listed, the channel between the ordinary high water mark on each bank, which is defined in 33 CFR 329.11 as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.'' The distances between landmarks marking the upstream and downstream boundaries of the unit are given in kilometers and equivalent miles, as measured by tracing the thalweg (a line connecting the lowest points of successive cross sections) of the stream, not the straight-line distance. River miles referenced in this rule were taken from a USACE 1985 stream mileage table.

The river channel within the entire unit is owned by the State of Alabama, and the vast majority of adjacent lands are under private ownership, with the exception of a portion of the Cahaba River that includes Talladega National Forest (Oakmulgee Division). Although the Oakmulgee Division encompasses a total of 63,484 hectares (ha) (156,871 acres (ac)), there are only about 9,952 ha (24,591 ac) that are directly adjacent to the Cahaba River. The Barton Beach Reserve, a small tract owned by The Nature Conservancy, encompasses 45 ha (112 ac) and covers approximately 1,150 m (3,773 ft) along the Cahaba River. This unit meets the definition of critical habitat based on the discussion above and contains all PCEs. This unit was occupied at the time of listing and is currently occupied. Special management of the PCEs for the Alabama sturgeon and its habitat may be required for the following threats: Low-flow conditions, detrimental changes in water quality, reduction in the amount of free-flowing habitat, and detrimental changes to the morphology or stability of the river channel.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect Alabama sturgeon or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the USACE under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under

section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for Alabama sturgeon. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Alabama sturgeon include, but are not limited to:

(1) Actions that would significantly alter the existing flow regime to the point at which the habitat could no longer sustain normal behavior and promote species recovery. Such activities could include, but are not limited to, construction and operation of dams, water withdrawals, and channelization. These activities could eliminate or reduce spawning habitats, impair the development of embryos and larvae, impede or eliminate normal migration patterns, reduce the ability of the river to adequately assimilate pollution, and compromise the integrity and utility of cool water refuges (perennial tributaries). In addition, flows less than 4,640 cubic feet per second, as determined by the USACE at Montgomery, would need to be evaluated on an individual basis to determine if they may affect the critical habitat, and conclusions could be dependent, in part, on intervening flows (*e.g.*, Catoma Creek, Cahaba River), water temperature, and dissolved oxygen content in the Alabama River downstream of Montgomery. Dependent on these factors and conditions in the river at the time of the consultation, a Not Likely to Adversely Affect Determination could still be possible.

(2) Actions that would significantly alter the morphology and stability of the river channel. Such activities would include, but are not limited to, dredging and mining of consolidated bed material, impoundments, road and bridge construction, and destruction of riparian vegetation. These activities could eliminate suitable substrates for egg deposition and development, increase turbidity, and initiate erosion along the banks, which could increase water temperatures and reduce the width of the riparian zone.

(3) Actions that would significantly decrease the amount of currently available free-flowing habitat. Such activities would include, but are not limited to, construction and operation of dams, water withdrawals, further alteration of flow regimes, and diversions. These activities could further minimize the currently available length of free-flowing habitat to support spawning migrations and development of embryos and larvae.

(4) Actions that would significantly alter water chemistry beyond what is required in the State of Alabama water quality standards. Such activities would include, but are not limited to, the discharge of chemicals, biological pollutants, nutrients, and other toxic substances that originate from non-point or point source discharges, and altered flow patterns that could lower dissolved oxygen levels. These substances could directly, or through accumulation in tissue, impair sturgeon behavior, reproduction, and growth.

We consider the unit designated as critical habitat to contain features essential to the conservation of Alabama sturgeon and which require special management. The unit is within the geographic range of the species, it was occupied by the species at the time of listing, and it is currently occupied. Federal agencies already consult with us on activities that may affect the species, to ensure that their actions do not jeopardize the continued existence of Alabama sturgeon.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed integrated natural resources management plan within the designated critical habitat designation.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on December 30, 2008 (73 FR 79770), based on the May 27, 2008, proposed rule (73 FR 30361). We accepted comments on the draft analysis until February 9, 2009. Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for Alabama sturgeon. The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2000 (year of the species' listing; 65 FR 26438), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies economic impacts of Alabama sturgeon conservation efforts associated with the following categories of activity: water management, activities that impact water quality, dredging activities and other impacts (*e.g.*, bridge replacement, management plans, natural gas pipelines, etc.).

Present value baseline impacts associated with potential future conservation efforts for the sturgeon are estimated to be $636,000 ($42,700 annualized), assuming a 3 percent discount rate, or $466,000 ($44,000 annualized), assuming a 7 percent discount rate, over the next 20 years. Baseline impacts quantified in this analysis are 40 percent project modifications for dredging activities. All remaining baseline impacts are administrative costs of section 7 consultation. Impacts to dredging activities represent roughly 58.9 percent of forecast post-designation baseline costs. Impacts associated with water management represent 17.1 percent of the total, and impacts to activities that may affect water quality represent 15.1 percent of the total. Present value incremental impacts are anticipated to result entirely from the added administrative requirements of forecast section 7 consultations, and are estimated to be $93,800 ($6,300 annualized), assuming a 3 percent discount rate, or $71,200 ($6,720 annualized), assuming a 7 percent discount rate.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Following a consideration of the potential conservation benefits to the species from the designation of critical habitat and the potential economic impact, we have determined that there is a great conservation benefit to maintaining all areas within the designation. Consequently, we are not excluding any areas from this designation of critical habitat for the Alabama sturgeon based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting the Alabama Ecological Services Field Office (*see* **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for Alabama sturgeon are not owned or managed by the DOD; therefore, we anticipate no impact to national security. There are no areas excluded from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for Alabama sturgeon, and the final designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs from this critical habitat designation. There are no areas excluded from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the

environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Alabama sturgeon will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, water management, water quality, dredging, and other activities). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Alabama sturgeon. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (*see Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Alabama sturgeon and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 6 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Water management, (2) water quality, (3) dredging, and (4) other activities.

All incremental impacts quantified in the economic analysis are administrative impacts of conducting the forecasted section 7 consultations. That is, the designation of critical habitat is not forecasted to result in changes in operations and management of the water-dependent land use activities considered in this analysis as discussed in Sections 3 through 6. Small entities may, however, be required to spend additional time considering critical habitat during section 7 consultation. These incremental, administrative impacts are the focus of this analysis of impacts to small entities.

For development, construction, and dredging activities, the threshold is expressed in terms of annual revenues. While this threshold marks the high-end revenue estimate for the potentially affected small businesses, impacts per entity as described in the exhibit are significantly less than the threshold estimates. Conservatively assuming a single business is associated with all of the forecasted impacts for each activity, the greatest impact per entity would be incurred by a business that affects water quality. Note that the present-value, 20-year impact of $5,570 to a single small business is less than 0.01 percent of the small business annual revenue thresholds in this case.

In addition to the incremental impacts summarized in Exhibit A–1 of the FEA, Sections 3 and 4 of the analysis discuss potential impacts that may result from providing greater river flow or complying with water quality standards to benefit the sturgeon.

While this analysis acknowledges that such changes may generate economic impacts, we indicated in an October 22, 2008, memorandum (provided as Appendix D in the FEA) that we cannot reliably predict whether, when, or the reasons, we may request these conservation efforts. In the case that the designation of critical habitat triggers the request for these conservation efforts, associated economic impacts would be considered incremental and therefore relevant to this discussion of impacts on small entities. In the case that we request higher river flows or accelerated compliance with existing water standards, small businesses may be affected. The nature of these potential impacts is presented in Sections 3 and 4 of the FEA.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and

currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Alabama sturgeon will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. There are currently two hydroelectric dams (Robert F. Henry and Millers Ferry Locks and Dams) located on portions of the river within the critical habitat designation. Although insufficient information is available to estimate changes in the electricity production of these facilities due to sturgeon conservation efforts, it is unlikely that any such changes would result in decreased electricity production of one billion kilowatt-hours in even the worst drought year (when additional flows for sturgeon conservation efforts would be most needed). During the drought year of 2007, total electricity generation from the 15 hydroelectric facilities in the ACT Basin was roughly 2.19 billion kilowatt-hours. To reach the 1 billion kilowatt-hour reduction specified in Executive Order No. 13211, 2007 generation would need to be reduced by 46 percent. Although changes in the timing and magnitude of flows throughout a given year for sturgeon conservation efforts may impact total electricity generation, total flow volume over the course of that year will remain unchanged. Any recommendations from us are therefore unlikely to cause reductions in generation of this magnitude. As such, designation of critical habitat is not expected to lead to any of the adverse outcomes specified in Executive Order No. 13211. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments, because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for Alabama sturgeon in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for Alabama sturgeon does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Alabama. We received comments from the State of Georgia, the Alabama Office of Water Resources, the Governor's Office for the State of Alabama, and the

Alabama Department of Conservation and Natural Resources, and we have addressed them in the Summary of Comments and Recommendations section of the rule. The designation of critical habitat in areas currently occupied by the Alabama sturgeon may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments, in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the Alabama sturgeon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of the Alabama sturgeon. Therefore, we are not designating critical habitat for the Alabama sturgeon on Tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Alabama Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff of the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Sturgeon, Alabama'' under ''FISHES'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Sturgeon, Alabama	*Scaphirhynchus suttkusi*	U.S.A. (AL, MS)	NA	E	697	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (e) by adding an entry for ''Alabama sturgeon (*Scaphirhynchus suttkusi*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes

* * * * *

Alabama sturgeon (*Scaphirhynchus suttkusi*)

(1) Critical habitat unit is depicted for Baldwin, Monroe, Wilcox, Clarke, Dallas, Lowndes, Autauga, Bibb, and Perry Counties, Alabama, on the map below.

(2) The primary constituent elements of critical habitat for the Alabama sturgeon are:

(i) A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality of discharge over time) necessary to maintain all life stages of the species in the riverine environment, including migration, breeding site selection, resting, larval development, and protection of cool water refuges (*i.e.,* tributaries).

(ii) River channel with stable sand and gravel river bottoms, and bedrock walls, including associated mussel beds.

(iii) Limestone outcrops and cut limestone banks, large gravel or cobble such as that found around channel training devices, and bedrock channel walls that provide riverine spawning sites with substrates suitable for embryo deposition and development.

(iv) Long sections of free-flowing water to allow spawning migrations and development of embryos and larvae.

(v) Water temperature not exceeding 32° Celsius (90° Fahrenheit); dissolved oxygen levels not less than 5 milligrams per liter (mg/L) (5 parts per million (ppm)), except under extreme conditions due to natural causes or downstream of existing hydroelectric impoundments, where it can range from 5 mg/L to 4 mg/L (5 ppm to 4 ppm); and pH within the range of 6.0 to 8.5.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, docks, dams, runways, roads, and other paved areas) and the land or waterway on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map unit. Data layers defining the map unit were created on a base of USGS 7.5′ quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit: Alabama and Cahaba Rivers; Baldwin, Monroe, Wilcox, Clarke, Dallas, Lowndes, Autauga, Perry, and Bibb Counties, Alabama.

(i) The unit encompasses 524 km (326 mi) of river channel. The portion of river channel in the Alabama River extends 394 km (245 mi) from its confluence with the Tombigbee River, Baldwin and Clarke Counties, Alabama, upstream to R.F. Henry Lock and Dam, Autauga and Lowndes Counties, Alabama; and the portion of river channel in the Cahaba River extends 130 km (81 mi) from its confluence with the Alabama River, Dallas County, Alabama, upstream to U.S. Highway 82, Bibb County, Alabama.

(ii) Note: Map of Unit, Critical Habitat for Alabama Sturgeon (*Scaphirhynchus suttkusi*): Alabama and Cahaba Rivers, follows:

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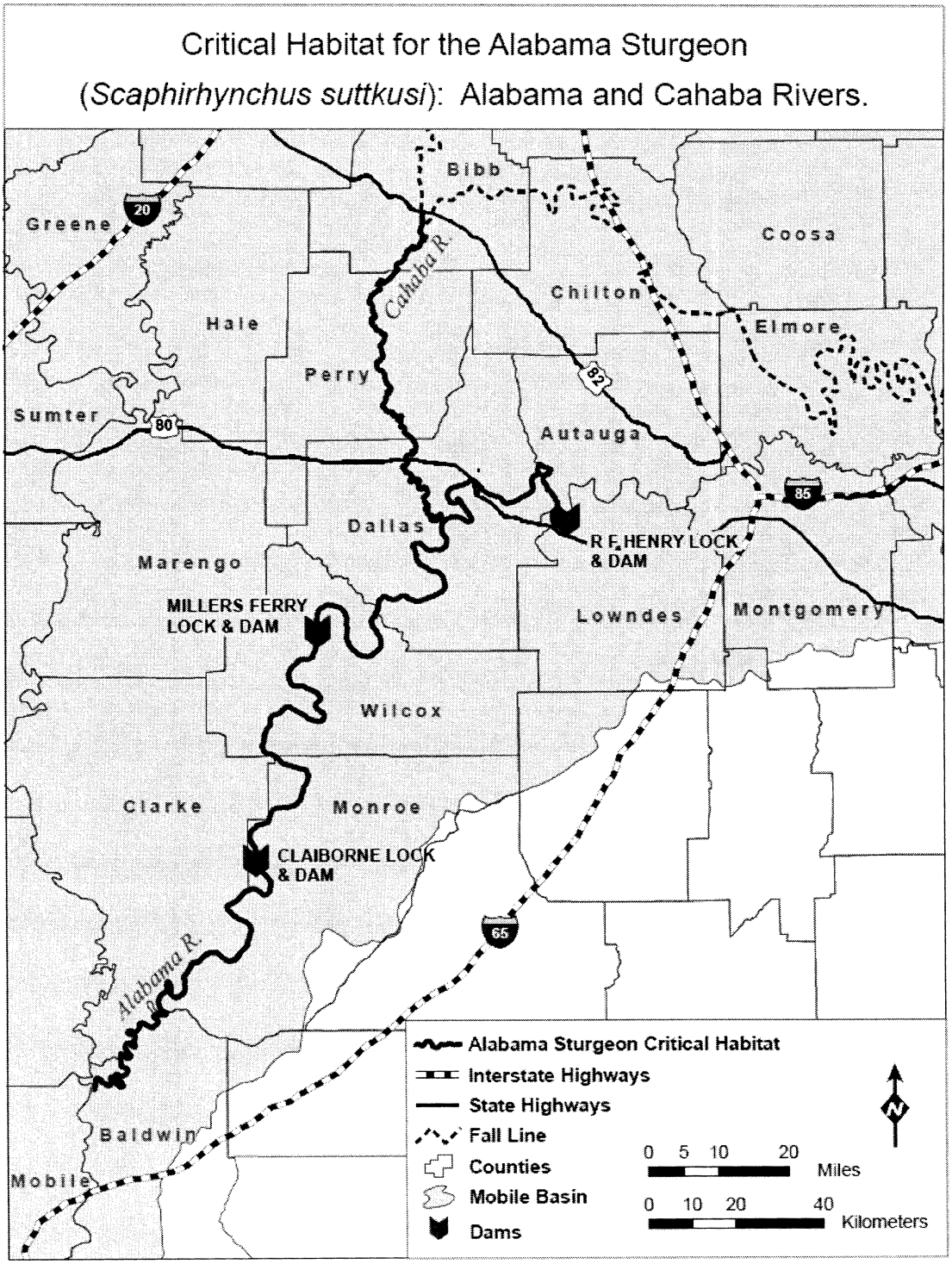

* * * * *

Dated: May 21, 2009.

Jane Lyder,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E9–12517 Filed 6–1–09; 8:45 am]

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S. 454/P.L. 111–23
Weapon Systems Acquisition Reform Act of 2009 (May 22, 2009; 123 Stat. 1704)

H.R. 627/P.L. 111–24
Credit Card Accountability Responsibility and Disclosure Act of 2009 (May 22, 2009; 123 Stat. 1734)

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