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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL83

Prevailing Rate Systems; Redefinition of the New Haven-Hartford and New London, CT, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to define the New Haven-Hartford and New London, CT, appropriated fund Federal Wage System (FWS) wage areas by county rather than by city and town boundaries. Defining the New England FWS wage areas by primarily considering county boundaries provides greater consistency in how OPM defines FWS wage areas and improves the ability to make direct data comparisons with Census Bureau data. The final rule defines the New Haven-Hartford wage area to include Hartford and New Haven Counties, CT, as the survey area and Fairfield, Litchfield, Middlesex, and Tolland Counties, CT, as the area of application and the New London wage area to include New London County, CT, as the survey area and Windham County, CT, as the area of application.

DATES: *Effective Date:* This regulation is effective on June 30, 2009.

Applicability date for the New Haven-Hartford, CT, wage area: This rule applies for the full-scale wage survey scheduled to begin in April 2011.

Applicability date for the New London, CT, wage area: This rule applies for the full-scale wage survey scheduled to begin in September 2010.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On March 24, 2009, the U.S. Office of Personnel Management (OPM) issued a proposed rule (74 FR 12280) to make the following three changes:

(1) Define the New Haven-Hartford and New London, CT, appropriated fund Federal Wage System wage areas by county rather than by city and town boundaries;

(2) Define the New Haven-Hartford wage area to include Hartford and New Haven Counties, CT, as the survey area and Fairfield, Litchfield, Middlesex, and Tolland Counties, CT, as the area of application; and

(3) Define the New London wage area to include New London County, CT, as the survey area and Windham County, CT, as the area of application.

These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee. The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of Information, Government employees, Reporting and recordkeeping requirements, Wages.

John Berry,
Director, U.S. Office of Personnel Management.

■ Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix C to subpart B, the wage area listing for the State of Connecticut is amended by revising the listings for New Haven-Hartford and New London; for the State of Massachusetts, by revising the listing for Central and Western Massachusetts; and for the State of Rhode Island, by revising the listing for Narragansett Bay, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Connecticut

New Haven-Hartford

Survey Area

Connecticut:
Hartford
New Haven

Area of Application. Survey area plus:

Connecticut:
Fairfield
Litchfield
Middlesex
Tolland

New London

Survey Area

Connecticut:
New London

Area of Application. Survey area plus:

Connecticut:
Windham

* * * * *

Massachusetts

* * * * *

Central and Western Massachusetts

Survey Area

Massachusetts:
The following cities and towns in:
Hampden County:
Agawam
Chicopee
East Longmeadow
Feeding Hills
Hampden
Holyoke
Longmeadow
Ludlow
Monson
Palmer
Southwick
Springfield
Three Rivers
Westfield
West Springfield
Wilbraham
Hampshire County:
Easthampton
Granby
Hadley
Northampton
South Hadley
Worcester County:
Warren
West Warren

Area of Application. Survey area plus:

Massachusetts:
Berkshire
Franklin

Worcester (except Blackstone and Millville)

The following cities and towns in:

Hampshire County:
Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington
Middlefield
Pelham
Plainfield
Southampton
Ware
Westhampton
Williamsburg
Worthington

Hampden County:
Blandford
Brimfield
Chester
Granville
Holland
Montgomery
Russell
Tolland
Wales

Middlesex County:
Ashby
Shirley
Townsend

New Hampshire:
Belknap
Carroll
Cheshire
Grafton
Hillsborough
Merrimack
Sullivan

Vermont:
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

* * * * *

Rhode Island

Narragansett Bay

Survey Area

Rhode Island:
Bristol
Newport

The following cities and towns:

Kent County:
Anthony
Coventry
East Greenwich
Greene
Warwick
West Warwick

Providence County:
Ashton
Burrillville
Central Falls
Cranston
Cumberland
Cumberland Hill
East Providence
Esmond
Forestdale
Greenville
Harrisville
Johnston
Lincoln
Manville
Mapleville
North Providence
North Smithfield
Oakland
Pascoag
Pawtucket
Providence
Saylesville
Slatersville
Smithfield
Valley Falls
Wallum Lake
Woonsocket

Washington County:
Davisville
Galilee
Lafayette
Narragansett
North Kingstown
Point Judith
Quonset Point
Saunderstown
Slocum

Massachusetts:

The following cities and towns:

Bristol County:
Attleboro
Fall River
North Attleboro
Rehoboth
Seekonk
Somerset
Swansea
Westport

Norfolk County:
Caryville
Plainville
South Bellingham

Worcester County:
Blackstone
Millville

Area of Application. Survey area plus:

Rhode Island:

The following cities and towns in:

Kent County:
West Greenwich

Providence County:
Foster
Glocester
Scituate

Washington County:
Charlestown
Exeter
Hopkinton
New Shoreham
Richmond
South Kingstown
Westerly

Massachusetts:

The following cities and towns in:

Bristol County:
Acushnet
Berkley
Dartmouth
Dighton
Fairhaven
Freetown
Mansfield
New Bedford
Norton
Raynham
Taunton

* * * * *

[FR Doc. E9–15474 Filed 6–29–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS–2006–0189]

RIN 0579–AC67

Movement of Hass Avocados From Areas Where Mexican Fruit Fly or Sapote Fruit Fly Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to relieve certain restrictions regarding the movement of Hass variety avocados. Specifically, we are amending our domestic quarantine regulations to provide for the interstate movement, with a certificate, of Hass avocados from areas in the United States quarantined for Mexican fruit fly or sapote fruit fly, provided that the fruit is safeguarded after harvest in accordance with specific measures. We are also amending our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. These actions are warranted in light of research demonstrating the limited host status of Hass avocados to various species of fruit flies in the genus *Anastrepha,* including Mexican fruit fly and sapote fruit fly. By amending both our domestic and foreign quarantine regulations, we are making them consistent with each other and relieving restrictions for Mexican Hass avocado producers. In addition, this action provides an alternative means for Hass avocados to be moved interstate if the avocados originate from a Mexican fruit fly or sapote fruit fly quarantined area in the United States.

DATES: *Effective Date:* July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Regarding the interstate movement of Hass avocados from Mexican fruit fly and sapote fruit fly quarantined areas,

contact Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–6553. Regarding import conditions for Hass avocados from Mexico, contact Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The domestic fruit fly regulations, contained in 7 CFR 301.32 through 301.32–10 (referred to below as the regulations), were established to prevent the spread of exotic fruit flies, including the Mexican fruit fly (*Anastrepha ludens*) and the sapote fruit fly (*Anastrepha serpentina*) into noninfested areas of the United States. The regulations designate soil and many fruits, nuts, vegetables, and berries as regulated articles and impose restrictions on the interstate movement of those regulated articles from quarantined areas.

Avocado, *Persea americana* (including the variety Hass), is listed as a regulated article in the regulations in § 301.32–2. Because avocados are listed as regulated articles, they may not be moved interstate from a quarantined area unless the movement is authorized by a certificate or a limited permit. In general, avocados may be eligible for a certificate if a bait spray is applied to the production site beginning prior to harvest and continuing through the end of harvest or if a post-harvest irradiation treatment is applied to the fruit. To be eligible for a limited permit, a regulated article must be moved to a specific destination for specialized handling, utilization or processing, or for treatment and meet all other applicable provisions of the regulations.

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–49), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into the United States and spread within it. The requirements for importing Hass variety avocados into the United States from Michoacan, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

On April 2, 2008, we published in the **Federal Register** (73 FR 17930–17935, Docket No. APHIS–2006–0189) a proposal [1] to amend our domestic quarantine regulations to provide for the interstate movement of Hass avocados from Mexican fruit fly and sapote fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We also proposed to amend our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. These proposed actions were intended to make our domestic and foreign requirements for movement of Hass avocados consistent with each other, relieve restrictions for Mexican Hass avocado producers, and provide an alternative means for Hass avocados to be moved interstate if the avocados originate from a Mexican fruit fly or sapote fruit fly quarantined area in the United States.

We solicited comments concerning our proposal for 60 days ending June 2, 2008. We reopened and extended the deadline for comments until June 26, 2008, in a document published in the **Federal Register** on June 12, 2008 (73 FR 33333). We received eight comments by the close of the comment period. They were from domestic and foreign avocado producers, exporters, researchers, and representatives of State and foreign governments. They are discussed below by topic.

A commenter stated that while the Hass avocado is resistant to infestation by the Mexican fruit fly while on the tree, it is subject to such infestation after harvest or if the fruit has been punctured. It was suggested that, although the interstate movement requirements contained in the April 2008 proposed rule required certification that fallen fruit not be harvested and that tree-harvested fruit not be exposed for excessive periods in the field, there may not be adequate regulatory oversight to ensure that these prohibited practices do not take place.

APHIS, in cooperation with State plant health program officials, maintains sufficient oversight to ensure that its regulations are enforced. Procedures for handling, packing, processing, and moving Hass avocados interstate are monitored by APHIS and State cooperators under compliance agreements with domestic producers and shippers.

Similar concerns were expressed by commenters regarding Hass avocados imported from Mexico. Two commenters stated that they could not find in the proposed rule a prohibition on the movement or importation of fruit that has punctures, cuts, or other breaks in the skin. Such fruit would be more susceptible to fruit fly infestation than would healthy fruit.

Under a work plan agreement between APHIS and the Government of Mexico, 2007, Mexican packinghouses exporting avocados to the United States are required to be registered with the Jefatura del Programa de Sanidad Vegetal (PSV) and certified by both the Direccción General de Sanidad Vegetal (DGSV) and by APHIS. DGSV personnel are required to cull fruit that includes punctures, cuts, or breaks in the skin at the packinghouse. In addition, current § 319.56–30(c)(2)(iii) requires that avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in the field boxes of fruit to be packed for export. That requirement will not be affected by this rulemaking.

The same commenters also questioned the appropriateness of linking our proposed changes to the domestic regulations with our proposed changes to our import regulations, suggesting that the proposals should be treated separately under distinct rulemaking actions. It was stated that the domestic and Mexican fruit fly infestations differ because Mexico has a permanent endemic population of the *Anastrepha* species in question, while those flies are not established in California or elsewhere in the United States. The domestic and Mexican fruit fly population pressures are therefore different, according to the commenters, who opposed removing *Anastrepha* trapping requirements for Hass avocados imported from Michoacan.

We agree with the commenters' statements regarding the differences in the nature of fruit fly infestations in the United States and Michoacan, Mexico, but do not believe that those differences necessitate any modification of the final rule. In conjunction with the April 2008 proposed rule, we made available to the public a risk management document, titled ''Removal of *Anastrepha* Fruit Fly Trapping Requirements from Mexican 'Hass' Avocados for Importation into the United States,'' which evaluated the risk for the introduction of *Anastrepha* spp. from Mexican Hass avocados. Our evaluation of that risk was based in part on a peer-reviewed study by M. Aluja *et al.* (2004) of the status of Hass avocados

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0189.*

as hosts for Mexican fruit flies. The study was subsequently reviewed by the USDA's Agricultural Research Service (ARS) and by APHIS, and the results led us to conclude that commercially produced Hass avocados are a very poor host for the Mexican fruit fly. Our risk management document also noted that between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies. The sample included fruit from wild trees, backyards, packinghouses, and border inspection stations. No fruit flies were found in the fruit that was sampled over that 9-year period. The results of the Aluja study and of our sampling led us to conclude that the removal of trapping requirements contained in § 319.56–30 is warranted.

The same commenters also suggested that a prohibition may be needed on the growing of prime fruit-fly hosts in association with Mexican avocado groves where avocados are grown that are destined for susceptible States such as California, Texas, and Florida. While expressing agreement with research demonstrating that Hass avocados are poor hosts for fruit flies, the commenters suggested that if there are prime host fruits grown adjacent to Hass avocado orchards, the danger of infestation of the avocados is increased. If the adjacent prime hosts are harvested, the fruit flies will seek nearby lesser hosts, such as avocados.

There are currently no fruit-fly-host commodities that are being grown adjacent to the Hass avocado orchards in Michoacan, Mexico, that have been approved by APHIS to export their fruit to the United States. If any host commodities were being grown in the vicinity of an avocado orchard, we would require a buffer system to be in place to prevent the avocados from being infested.

Several commenters discussed the potential susceptibility to fruit fly infestation of Hass avocados from weakened or stressed trees. It was suggested that conditions such as drought stress, root rot, poor nutrition, and ring neck, which are present in Michoacan avocado groves, may make avocados attached to the trees in those groves more susceptible to Mexican fruit fly infestation by causing a breakdown in host plant resistance. Such a phenomenon was observed in Sharwil avocados in Hawaii, which became infested with Oriental fruit fly when still attached to the trees. It was suggested that our risk management document should have considered the influences of drought stress, root rot, poor nutrition, and ring neck on the potential susceptibility of Hass avocados to Mexican fruit fly infestations.

We do not believe the situations are analogous. Hass avocados and Sharwil avocados are different varieties. Oriental fruit fly (*Bactrocera dorsalis*) is a different pest species than the *Anastrepha* species found in Mexico. Oriental fruit fly was found to infest Sharwil avocados in Hawaii after 3,000 fruit were harvested and cut. As noted earlier, between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies, and no fruit flies were found. This sampling took place in all types of weather conditions.

Several commenters addressed issues having to do with trapping. Trapping methods were discussed, and reservations about our intention to amend the import regulations by removing trapping requirements for Hass avocados from Mexico were expressed. The issues raised by these commenters are discussed in greater detail in the paragraphs that follow.

Some commenters questioned the adequacy of existing trapping methods for the Mexican fruit fly. It was suggested that, due to the inefficiencies of the McPhail trap, which is used in Michoacan, Mexico, it is likely that the fruit fly populations there are being underestimated. It was noted that no species-specific trap is available for Mexican fruit fly (only McPhail and Multilure traps) and that many areas of California contain good host plants for the highly polyphagous Mexican fruit fly that emerging adult females would seek out and oviposit in after mating. Infestations into the United States could therefore become widespread before detection, causing significant environmental and economic hardship. One commenter expressed a particular concern about Mexican fruit fly becoming established in Florida, which is especially vulnerable since citrus is a preferred host, because there currently exists no adequate attractant for early detection purposes.

There have been no indications that Mexican fruit fly populations are being underestimated in Michoacan. Mexico's national fruit fly program, first implemented in 1992, is based on monitoring (trapping and fruit sampling) and control (bait spray, release of natural enemies, and sterile flies) and is mandated by Mexican regulations. The absence of fruit flies in our sample of more than 27 million Mexican Hass avocados is indicative of the efficacy of the Mexican national program.

APHIS does, however, share the commenters' concerns about the establishment of Mexican fruit fly in noninfested parts of the United States. APHIS works cooperatively with State and territorial officials to maintain extensive exotic fruit fly surveillance, including surveillance for Mexican fruit fly, employing detection systems throughout 13 States and territories susceptible to exotic fruit fly outbreaks. Nationally and internationally accepted trap/lure combinations are utilized in each of these systems. To address concerns regarding the sensitivity of these exotic fruit fly detection systems toward species of *Anastrepha* spp., APHIS is currently working with State and territorial cooperators, ARS, and industry to explore new trap/lure systems to enhance the sensitivity of exotic fruit fly detection systems within the United States. We are regularly evaluating new trap/lure systems.

A number of commenters opposed the removal of bait spray and trapping requirements for Hass avocado orchards in Mexico. Some commenters questioned how fruit fly populations in Mexican orchards that ship avocados to fruit-fly susceptible States such as California, Texas, and Florida would be assessed if trapping were not required. It was stated that a key component of any systems approach is detection of low, medium, or high levels of the pest in the area where export fruit are harvested. For fruit flies, this means trapping to monitor seasonal population fluctuations. It was suggested that we did not have adequate data to support the removal of trapping requirements for *Anastrepha* in Hass avocado orchards in Mexico. According to these commenters, multiple years of data from multiple sites were needed to justify such an action. A commenter who requested that the final rule be modified to require the continued monitoring of *Anastrepha* spp. fruit flies as a pre-condition for the shipment of Hass avocados from Mexico to the United States stated that monitoring could be accomplished as part of Mexico's national fruit fly trapping program, provided that traps are deployed in representative avocado groves, particularly at low elevations.

We do not agree with these comments. Although this rulemaking eliminates the requirement for trapping specifically in the certified orchards for *Anastrepha* species associated with Mexican Hass avocado imports, trapping and suppression programs will remain in place under Mexico's National Program against Fruit Flies. Mexico implemented the program in 1992 for the purpose of controlling, suppressing, and eradicating four species of fruit flies: *Anastrepha ludens,*

A. obliqua, A. striata, and *A. serpentina.* The program is based on monitoring (trapping and fruit sampling) and control (bait spray, release of natural enemies and sterile flies) and is mandated by Mexican regulations. Also, as noted above, between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies, and no fruit flies were found. Therefore, we believe the data demonstrate the efficacy of Mexico's National Program against Fruit Flies and support the removal from the regulations in § 319.56–30 of trapping and bait spray requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. Finally, with regard to sampling at low elevations, the placement of traps in Mexican orchards in accordance with Mexico's National Program against Fruit Flies falls under the purview of the Mexican Government rather than APHIS.

We received several comments pertaining to the risk management document that was made available to the public in conjunction with the April 2008 proposed rule.

A commenter representing a Mexican producers' association, while in general agreement with the findings of the risk management document, critiqued certain aspects of it. It was suggested that one important point missing from the risk management document was its failure to mention the ongoing trapping for *Anastrepha* that will continue under the Mexican national program even after the elimination of the trapping requirements for *Anastrepha* in § 319.56–30.

We agree with this comment and will amend the risk management document to clarify that the general Mexican national fruit fly trapping program for all *Tephritid* fruit flies will continue in the avocado growing areas, and only the extra fruit fly trapping for *Anastrepha* required by the current certification program will be eliminated under this action.

The same commenter also noted that while the risk management document indicates that APHIS agrees with findings showing that Mexican Hass avocadoes are not hosts for *Anastrepha* species, it does not explicitly refute the somewhat contradictory position of ARS that Hass avocados are ''very poor'' hosts for Mexican fruit flies. The commenter would have preferred that our risk management document contain a categorical statement that commercially produced Mexican Hass avocados are not hosts for *Anastrepha* species.

APHIS' risk documentation is not intended to affirm or refute the conclusions of ARS' host susceptibility determinations but rather to recommend the appropriate phytosantary measures needed to maintain an acceptable pest risk level to prevent the spread of identified pests, such as *Anastrepha* species, to noninfested areas of the United States.

A commenter who represented an association of domestic avocado producers, noting that our risk management document reached conclusions supporting those of the Aluja study, stated that that study, standing alone, does not provide conclusive evidence that Hass avocados are unlikely to support the growth and development of *Anastrepha* larvae. The commenter stated that sample sizes in the Aluja study were inadequate, the sampling plan was flawed, and data related to the effects of elevation and quarantine security were lacking. The commenter stated that the overwhelming majority of the adult flies captured in experimental orchards during the Aluja study were trapped in the municipality of Ziracuaretiro, which, in comparison to other locations in Mexico in which Hass avocados are grown, is relatively low in altitude. It was suggested by the commenter that further study is needed to better understand the species-host relationship at issue.

The Aluja study was one piece of evidence that we used in making our determination. Of greater significance was our sampling, as noted above, of very large quantities of imported Hass avocados over an extended time period without any findings of the targeted pests. The results of our sampling, along with our review of the Aluja study, led us to conclude that the Hass avocado, when harvested and safeguarded according to the parameters of the systems approach contained in our regulations, is not a host to *Anastrepha* species fruit flies. We will continue to cut Hass avocado fruits as part of our importation program for this fruit, and if pests are intercepted, then we will take appropriate measures to mitigate the risk. Regarding the possible effects of elevation cited by the commenter, while fruit-fly population density may be higher at lower altitudes, there has been no evidence to suggest that Hass avocados grown at lower altitudes in Mexico have been more susceptible to infestation. *Anastrepha* prevalence measured by trap captures, as in Ziracuaretiro, does not speak to host susceptibility. If a fruit is not a host for a particular pest, then the fruit-fly population density at the altitude at which the fruit is grown is of no consequence.

A commenter stated that the environmental assessment accompanying the April 2008 proposed rule was flawed because it failed to account for economic impacts on important California commodities such as citrus and many tree fruits (also non-Hass avocados), which are preferred hosts for Mexican fruit fly and would be faced with quarantines on shipment should Mexican fruit fly be found in California.

The purpose of the environmental assessment was to evaluate the potential effects of this rulemaking on the human environment. Addressing possible economic impacts would have been beyond the scope of the environmental assessment.

One commenter stated that identification and traceback provisions included under our proposed packinghouse requirements should apply to all fruit originating in an area under domestic quarantine for Mexican or sapote fruit fly. The packinghouse requirements in the April 2008 proposed rule, according to the commenter, could be interpreted as applying only to packinghouses within a quarantined area, meaning that the requirement that the identity of avocados be maintained from field boxes or containers to shipping boxes in the packinghouse may not apply to avocados grown in an orchard in a quarantined area if the fruit is packed in a packinghouse outside the quarantined area.

We agree with this comment. In this final rule, we have modified § 301.32–(4)(d)(2) to clarify that those identification and traceback provisions apply to all Hass avocados originating in a quarantined area, regardless of whether or not the packinghouse in which they are packed is located in the quarantined area.

A commenter suggested that the final rule should specify regulatory actions that will be taken by APHIS and DGSV if fruit fly larvae are discovered in a Hass avocado from an orchard certified under the Mexican avocado import program.

The work plan agreement between APHIS and the Government of Mexico provides for necessary actions in cases of *Anastrepha* finds, including suspension of the export certification of Mexican orchards, municipalities, or packinghouses where appropriate. Since the issues involved may be complex and are subject to negotiation with Mexico, we believe that it is more appropriate to include enforcement actions that may be taken by APHIS and DGSV in the work

plan agreement rather than in the regulations.

Miscellaneous

The April 2008 proposed rule contained, among other things, amendments to two separate subparts of the domestic regulations: ''Subpart—Mexican Fruit Fly Quarantine and Regulations'' and ''Subpart—Sapote Fruit Fly.'' Specifically, we proposed to add new §§ 301.6411 and 301.99–11, both of which listed requirements for interstate movement of Hass avocados from quarantined areas. The proposed requirements contained in §§ 301.64–11 and 301.99–11 were identical.

In a final rule published in the **Federal Register** on June 9, 2008 (73 FR 32431–32439, Docket No. APHIS–2007–0084), however, we consolidated our domestic regulations pertaining to exotic fruit flies. Previously, those regulations had been divided into six separate subparts, each of which pertained to a particular species (Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, melon fruit fly, West Indian fruit fly, and sapote fruit fly, respectively). The June 2008 final rule removed all six of those subparts from the regulations and consolidated the requirements they contained into one new subpart that covers all six species. That action was taken to prevent unnecessary duplication in our regulations and make them clearer and easier to use, since each of the six subparts contained sections that were substantially the same as the corresponding sections in the other five.

''Subpart—Fruit Flies,'' the new subpart created under the June 2008 rulemaking, consists of §§ 301.32 to 301.32–10. In this final rule, we are amending the regulations in § 301.32–4, which contains interstate movement requirements for regulated articles from quarantined areas, and in § 301.32–5, which pertains to the issuance and cancellation of certificates and limited permits. These amendments are, in substance, identical to those we had proposed to make to the regulations in April 2008 by adding new §§ 301.64–11 and 301.99–11 and new paragraph (a)(1)(iv) to § 301.99–5.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule amends our domestic quarantine regulations to provide for the interstate movement, with a certificate, of Hass avocados from areas in the United States quarantined for Mexican fruit fly and sapote fruit fly, provided that the fruit is safeguarded after harvest in accordance with specific measures. The rule also amends our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico.

In the 2006–2007 season, the United States produced 298 million pounds of avocados, valued at $208 million. Over 90 percent of the avocados grown in the United States are produced in California. Ninety-five percent of California avocados are of the Hass variety.[2] For the period 2006 to 2008, the United States imported an average of approximately 414 million pounds of Hass avocados from Mexico, valued at $374 million.[3] This quantity represents almost 80 percent of U.S. Hass avocado imports.

Entities potentially affected by this rule include domestic avocado producers and importers of Hass avocados from Mexico. Under the North American Industry Classification System (NAICS), potentially affected entities fall into the following categories: Other Noncitrus Fruit Farming (NAICS 111339), Fruit and Vegetable Markets (NAICS 445230), Wholesalers and Other Grocery Stores (NAICS 445110), and Fresh Fruit and Vegetable Wholesalers (NAICS 424480).

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The Small Business Administration (SBA) classifies entities in the above industry categories as small if they have annual receipts of not more than $750,000 (NAICS 111339), not more than $7 million (NAICS 445230), or not more than $27 million (NAICS 445110); or if their employees number not more than 100 (NAICS 424480).

According to the 2007 Census of Agriculture, 95 percent of the farms involved in fruit tree farming had annual sales of $500,000 or less and would be considered small by SBA standards. We conclude, therefore, that avocado producers are predominantly small entities. In 2002, about 95 percent (4,044 of 4,244) of fresh fruit and vegetable wholesalers in the United States were also small by SBA standards.[4] Neither the Census of Agriculture nor the Economic Census contains annual revenue information for firms classified under NAICS 445110 or NAICS 445230. In addition, there are 41 U.S. importers of Hass avocados from Mexico that may be affected by this rule, but economic information is not available for these entities.

The only domestic avocado producers that will be directly affected by this rule are ones located within a Mexican fruit fly or sapote fruit fly quarantined area that move their product interstate. Currently, the Mexican fruit fly quarantined area in California is in Los Angeles County and contains only two avocado producers that farm a total of approximately 5 acres. In addition, Hidalgo and Cameron Counties in Texas are also under Mexican fruit fly quarantine. However, there is only one small avocado orchard in Hidalgo County and the avocados produced there are consumed within the county; the producer does not meet regulatory requirements that would allow movement of avocados to areas that are not quarantined for Mexican fruit fly. With this rule, fruit fly treatment restrictions on interstate movement would be removed, perhaps influencing the Hidalgo County producer's marketing decisions.

As a result of this rulemaking, savings to U.S. producers that move Hass avocados interstate from a quarantined area are expected to amount to a fraction of 1 percent of production costs. We expect that the impact on costs of production for Hass avocados imported from Mexico will be similarly small. In addition, as noted above, there are at present only two avocado producers in California and one in Texas that may be affected by this rulemaking. Any effects for wholesalers, importers, and other avocado merchants will be secondary, and likely negligible, based on the expected cost savings for affected producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

[2] USDA Economic Research Service, Fruit and Tree Nuts Situation and Outlook October, 2007.

[3] World Trade Atlas—U.S. imports from Mexico.

[4] 2002 Economic Census. Department of Commerce. U.S. Bureau of the Census. North American Industry Classification System (NAICS) Category—424480: Fresh fruit & Vegetable wholesalers.

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the changes to the domestic and foreign quarantine regulations specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[5] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

[5] Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0189*. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0336.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 301 and 319 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.32–4 is amended by adding a new paragraph (d) and by revising the OMB citation at the end of the section to read as follows:

§ 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

* * * * *

(d) Hass avocados that are grown or packed in an area quarantined for Mexican or sapote fruit fly and that are moving interstate from such an area are subject to the following additional requirements:

(1) *Orchard sanitation and safeguarding requirements.* (i) Hass avocado fruit that has fallen from the trees may not be included in field boxes of fruit to be packed for shipping.

(ii) Harvested Hass avocados must be placed in field boxes or containers of field boxes that are marked to show the location of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(iii) Hass avocados must be protected from fruit fly infestations during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating the location of the orchard where the avocados originated.

(2) *Packinghouse requirements for Hass avocados packed within a quarantined area.* (i) All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(ii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iii) If the Hass avocados were grown in an orchard within the quarantined area, the identity of the avocados must be maintained from field boxes or containers to the shipping boxes in the packinghouse so that the avocados can be traced back to the orchard in which they were grown. The avocados must be packed in boxes or crates that are clearly marked with the identity of the grower and the packinghouse.

(iv) Any boxes of Hass avocados packed in the quarantined area must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through the quarantined area. Prior to leaving the packinghouse, the truck or container must be secured with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it is outside the quarantined area.

(v) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the workday must be kept inside the screened packinghouse.

(3) *Packinghouse requirements for Hass avocados packed outside a quarantined area but grown within a quarantined area.* Hass avocados grown in an orchard within a quarantined area but packed in a packinghouse outside the quarantined area must meet the

requirements of paragraph (d)(2)(iii) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0336)

■ 3. Section 301.32–5 is amended as follows:

■ a. In paragraph (a)(1)(iii), by removing the word ''and'' and adding the word ''or'' in its place.

■ b. By adding a new paragraph (a)(1)(iv) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 301.32–5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(1) * * *

(iv) The regulated articles are Hass variety avocados that have been harvested, safeguarded, and packed in accordance with the conditions in § 301.32–4(d); and

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0336)

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–30 [Amended]

■ 5. Section 319.56–30 is amended by removing paragraph (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) through (c)(2)(vi) as paragraphs (c)(2)(ii) through (c)(2)(v), respectively.

Done in Washington, DC, this 24th day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–15416 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID: OCC–2009–0007]

RIN 1557–AD25

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1361]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD42

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. OTS–2009–0007]

RIN 1550–AC34

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Department of the Treasury.

ACTION: Interim final rule with request for public comment.

SUMMARY: To support and facilitate the timely implementation and acceptance of the Making Home Affordable Program (Program) announced by the U.S. Department of the Treasury (Treasury) and to promote the stability of banks, savings associations, bank holding companies (collectively, banking organizations) and the financial system, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) have adopted this interim final rule (interim final rule or rule). The rule provides that mortgage loans modified under the Program will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other applicable prudential criteria.

DATES: The interim final rule is effective June 30, 2009. Comments must be received by July 30, 2009.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title ''Risk-Based Capital Guidelines—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov.* Under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2009–0007'' to submit or view public comments and to view supporting and related materials for this interim final rule. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2009–0007'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this

interim final rule by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2009–0007'' to view public comments for this rulemaking action.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1361, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit by any of the following methods:

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

• *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivered/Courier:* 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.

• *E-mail: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AD42.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

OTS: You may submit comments, identified by OTS–2009–0007, by any of the following methods:

• *Federal eRulemaking Portal:* ''Regulations.gov'': Go to *http://www.regulations.gov.* Under the ''more Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2009–0007'' to submit or view public comments and to view supporting and related materials for this proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2009–0007.

• *Facsimile:* (202) 906–6518.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2009–0007.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2009–0007'' to view public comments for this notice of proposed rulemaking action.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, Capital Policy Division, (202) 874–6022, or Carl Kaminski, Senior Attorney, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Barbara J. Bouchard, Associate Director, (202) 452–3072, or William Tiernay, Senior Supervisory Financial Analyst, (202) 872–7579, Division of Banking Supervision and Regulation; or April Snyder, Counsel, (202) 452–3099, or Benjamin W. McDonough, Senior Attorney, (202) 452–2036, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Ryan Sheller, Senior Capital Markets Specialist, (202) 898–6614, Capital Markets Branch, Division of Supervision and Consumer Protection; or Mark Handzlik, Senior Attorney, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division.

OTS: Teresa A. Scott, Senior Policy Analyst, (202) 906–6478, Capital Risk, or Marvin Shaw, Senior Attorney, (202) 906–6639, Legislation and Regulation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On March 4, 2009, Treasury announced guidelines under the Program to promote sustainable loan modifications for homeowners at risk of losing their homes due to foreclosure.[1] The Program provides a detailed framework for servicers to modify mortgages on owner-occupied residential properties and offers financial incentives to lenders and servicers that participate in the Program.[2] The Program also provides financial incentives for homeowners whose mortgages are modified pursuant to Program guidelines to remain current on their mortgages after modification.[3] Taken together, these incentives should help responsible homeowners remain in their homes and avoid foreclosure, which in turn should help ease the current downward pressures on house prices and the costs that families, communities, and the economy incur from unnecessary foreclosures.

Under the Program, Treasury will partner with lenders and loan services to offer at-risk homeowners loan modifications under which the homeowners may obtain more affordable monthly mortgage payments. The Program applies to a spectrum of outstanding loans, some of which meet all of the prudential criteria under the agencies' general risk-based capital rules and receive a 50 percent risk weight and some of which otherwise receive a 100 percent risk weight under the agencies' general risk-based capital rules.[4] Servicers who elect to participate in the Program are required to modify all eligible loans[5] in accordance with the Program guidelines unless explicitly prohibited by the governing pooling and servicing agreement and/or other lender servicing agreements. The Program guidelines require the lender to first reduce payments on eligible first-lien loans to an amount representing no greater than a 38 percent initial front-end debt-to-income ratio.[6] Treasury then will match further reductions in monthly payments with the lender dollar-for-dollar to achieve a 31 percent front-end debt-to-income ratio.[7] Borrowers whose back-end debt-to-income ratio exceeds 55 percent must agree to work with a foreclosure prevention counselor approved by the Department of Housing and Urban Development.[8]

In addition to the incentives for lenders, servicers are eligible for other incentive payments to encourage participation in the Program; borrowers can likewise receive incentive payments for remaining current on their monthly payments. Servicers will receive an up-front servicer incentive payment of $1,000 for each eligible first-lien modification. Lenders and servicers are eligible for one-time incentive payments of $1,500 and $500, respectively, for early modifications of first-lien mortgages—that is, modifications made while a borrower is still current on mortgage payments but at risk of imminent default. To encourage ongoing performance of modified loans, servicers also will receive ''Pay for Success'' incentive payments of up to $1,000 per year for up to three years for first-lien mortgages as long as borrowers remain in the program. Borrowers can likewise receive ''Pay for Performance Success'' incentive payments that reduce the principal balance on their first-lien mortgage up to $1,000 per year for up to five years in exchange for remaining current on monthly payments on their modified first-lien mortgages. Lenders also may receive a home price depreciation reserve payment to offset any losses if a modified loan subsequently defaults.

For second-lien mortgages, lenders are eligible to receive incentive payments based on the difference between the interest rate on the modified first-lien mortgage and the reduced interest rate (either 1 percent or 2 percent) on the second-lien mortgage following modification.[9] Services may receive a one-time $500 incentive payment for successful second-lien modifications, as well as additional incentive payments of up to $250 per year for up to three years for second-lien mortgages as long as both the modified first-lien and second-lien mortgages remain current. A borrower also may receive incentive payments of up to $250 dollars per year for a modified second-lien mortgage loan for up to five years for remaining current on the loan, which amounts will be paid to reduce the unpaid principal of the first-lien mortgage. However, second-lien modification incentives only will be paid with respect to a given property if the first-lien mortgage on the property also is modified under the Program.[10]

Treatment Under Risk-Based Capital Rules

Under the agencies' general risk-based capital rules, loans that are fully secured by first liens on one-to-four family residential properties, either owner-occupied or rented, and that meet certain prudential criteria (qualifying mortgage loans) are risk-weighted at 50 percent. If a banking organization holds both a first-lien and a junior-lien mortgage on the same property, and no other party holds an intervening lien, the loans are treated as a single loan secured by a first-lien mortgage and risk-weighted at 50 percent if the two loans, when aggregated, meet the conditions to be a qualifying mortgage loan.[11] Other junior-lien mortgage loans are risk-weighted at 100 percent.[12]

In general, to qualify for a 50 percent risk weight, a mortgage loan must have been made in accordance with prudent underwriting standards and may not be 90 days or more past due or carried in nonaccrual status. Mortgage loans that do not qualify for a 50 percent risk weight are assigned a 100 percent risk

[1] Further details about the Program, including Program terms and borrower eligibility criteria, are available at *http://www.makinghomeaffordable.gov*.

[2] For ease of reference, the term servicer refers both to servicers that service loans held by other entities and to lenders who service loans that they hold themselves. The term lender refers to the beneficial owner or owners of the mortgage.

[3] The Program also provides incentives for refinancing certain mortgage loans owned or guaranteed by Fannie Mae or Freddie Mac. This interim rule does not cover such loans.

[4] *See* 12 CFR part 3, Appendix A, sections 3(a)(3)(iii) and 3(a)(4) (OCC); 12 CFR parts 208 and 225, Appendix A, sections III.C.3. and III.C.4. (Board); 12 CFR part 325, Appendix A, section II.C (FDIC); and 12 CFR 567.1 and 567.6 (OTS).

[5] For a mortgage to be eligible for the Program, the property securing the mortgage loan must be a one-to-four family owner occupied property that is the primary residence of the mortgagee, not vacant, and not condemned. The mortgage also must have an unpaid principal balance (prior to capitalization of arrearages) at or below the Federal National Mortgage Association conforming loan limit for the type of property.

[6] A front-end debt-to-income ratio measures how much of the borrower's gross (pretax) monthly income is represented by the borrower's required payment on the first-lien mortgage, including real estate taxes and insurance.

[7] To qualify for the Treasury match, servicers must follow an established sequence of actions (capitalize arrearages, reduce interest rate, extend term or amortization period, and then defer principal) to reduce the front-end ratio on the loan from 38 percent to 31 percent, but may reduce principal on the loan at any stage during the modification sequence to meet affordability targets.

[8] A back-end debt-to-income ratio measures how much of a borrower's gross (pretax) monthly income would go toward monthly mortgage and nonmortgage debt service obligations.

[9] Participating servicers will be required to follow certain steps in modifying amortizing second-lien mortgages, including reducing the interest rate to 1 percent. Lenders may receive an incentive payment from Treasury equal to half of the difference between (i) the interest rate on the first lien as modified and (ii) 1 percent, subject to a floor.

[10] In some cases when appropriately tailored to the borrower, servicers also may choose to accept a lump-sum payment from Treasury to extinguish some or all of a second-lien mortgage under a pre-set formula.

[11] *See* 12 CFR part 3, Appendix A, section 3(a)(3)(iii) (OCC); 12 CFR parts 208 and 225, Appendix A, section III.C.3. (Board); 12 CFR part 325, Appendix A, section II.C (FDIC); and 12 CFR 567.1 (OTS).

[12] *See* 12 CFR part 3, Appendix A, section 3(a)(3)(iii) (OCC); 12 CFR parts 208 and 225, Appendix A, section III.C.4. (Board); 12 CFR part 325, Appendix A, section II.C. (FDIC); and 12 CFR 567.6(1)(iv) (OTS).

weight. Under the OCC's general risk-based capital rules for national banks, ''not restructured'' is listed among the criteria that mortgage loans must meet in order to receive a 50 percent risk weight.[13] Under the Board's general risk-based capital rules for bank holding companies and state member banks, mortgage loans must be ''performing in accordance with their original terms'' in order to receive a 50 percent risk weight.[14] Generally, mortgage loans that have been modified are considered to have been restructured (OCC), or are not considered to be performing in accordance with their original terms (Board). Therefore, under the OCC's and Board's current general risk-based capital rules, such loans must be risk weighted at 100 percent.

Under the FDIC's general risk-based capital rules, a state nonmember bank may assign a 50 percent risk weight to any modified mortgage loan, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight.[15] Under the OTS's general risk-based capital rules, a savings bank may assign a 50 percent risk weight to any modified residential mortgage loan, so long as the loan, as modified, is not 90 days or more past due and meets other applicable criteria for a 50 percent risk weight.[16] Thus, the revisions provided under this interim final rule relative to the FDIC's and OTS's risk-based capital rules are clarifying in nature.

After carefully considering the specific features of the Program, the agencies have adopted this interim final rule to provide that mortgage loans modified under the Program will retain the risk weight appropriate to the mortgage loan prior to the modification, as long as other applicable prudential criteria remain satisfied. Accordingly, under the interim final rule, a qualifying mortgage loan appropriately risk weighted at 50 percent before modification under the Program would continue to be risk weighted at 50 percent after modification, and a mortgage loan risk weighted at 100 percent prior to modification under the Program would continue to be risk weighted at 100 percent after modification. Consistent with the agencies' current treatment, if a mortgage loan were to become 90 days or more past due or carried in non-accrual status or otherwise restructured after being modified under the Program, the loan would be assigned a risk weight of 100 percent. Also consistent with current practice, the agencies intend to continue to allow past due and nonaccrual loans that receive a 100 percent risk weight to return to a 50 percent risk weight under certain circumstances, including after demonstration of a sustained period of repayment performance.

If a banking organization holds both a qualifying first-lien mortgage loan and a second-lien mortgage loan on the same property, with no intervening lien, and both loans are modified under the Program, the banking organization may continue to apply the risk weights appropriate to the loans prior to the modification, as long as other prudential criteria remain satisfied. Additionally, in certain circumstances under the general risk-based capital rules (as with, for example, a direct credit substitute or recourse obligation), a banking organization is permitted to look through an exposure to the risk weight of a residential mortgage loan underlying that exposure. In these cases, the banking organization would follow the capital treatment provided in this interim final rule in the event that the underlying residential mortgage loan has been modified pursuant to the Program.

The agencies believe that treating mortgage loans modified under the Program in the manner described above is appropriate in light of the special and unique incentive features of the Program and the fact that the Program is offered by the U.S. government in order to achieve the public policy objective of promoting sustainable loan modifications for homeowners at risk of foreclosure in a way that balances the interests of borrowers, servicers, and lenders. As previously described, the Program requires that a borrower's front-end debt-to-income ratio on a first-lien mortgage modified under the Program be reduced to no greater than 31 percent—which should improve the borrower's ability to repay the modified loan—and, importantly, provides for Treasury to match reductions in monthly payments dollar-for-dollar to reduce the borrower's front-end debt-to-income ratio from 38 percent to 31 percent. In addition, as described above, the Program provides material financial incentives for servicers and lenders to take actions to reduce the likelihood of defaults, as well as to servicers and borrowers designed to help borrowers remain current on modified loans. The structure and amount of these cash payments meaningfully align the financial incentives of servicers, lenders, and borrowers to encourage and increase the likelihood of participating borrowers remaining current on their mortgages. Each of these incentives is important to the agencies' determination with respect to the appropriate regulatory capital treatment of mortgage loans modified under the Program.

For the reasons discussed above, the agencies have adopted this interim final rule.

The agencies seek comment on all aspects of this interim final rule.

Regulatory Analysis

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act,[17] the agencies find that there is good cause for issuing this interim final rule and making the rule effective immediately upon publication, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The agencies have adopted the rule in light of, and to help address, the continuing stressed conditions in the housing and financial markets and the continuing unusual and urgent needs of homeowners. The rule will allow banking organizations to continue to risk weight loans modified under the Program at their pre-modification risk weights, thereby promoting stability in the banking and financial markets and promoting sustainable modifications of mortgages on owner-occupied residential properties. The agencies believe it is important to address immediately the risk-based capital treatment of mortgage loans modified under the Program in order to facilitate timely implementation and acceptance of the Program. The agencies note again that the Program has already been adopted and is in effect. The agencies are soliciting comment on all aspects of the rule and will make such changes that they consider appropriate or necessary after review of any comments received.

Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act generally requires that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter unless the relevant agency finds good cause that the

[13] 12 CFR part 3, Appendix A, section 3(a)(3)(iii) (OCC).

[14] 12 CFR parts 208 and 225, Appendix A, section III.C.3. (Board).

[15] 12 CFR Part 325, Appendix A, section II.C. (FDIC)

[16] 12 CFR 567.1 (OTS).

[17] *See* 5 U.S.C. 553(b) and (d).

regulations should become effective sooner and publishes its finding with the rule.[18] For the reasons discussed above, the agencies find good cause for making this interim final rule effective immediately. In addition, making the rule effective immediately will allow affected insured depository institutions and bank holding companies to take advantage of the rule in calculating their risk-based capital ratios at the end of the second quarter 2009. If banking organizations are required to hold residential mortgage loans modified pursuant to the Program at a 100 percent risk weight, the resulting risk-based capital requirements could be excessive in light of the risks associated with those assets. This interim final rule will ensure that banking organizations maintain appropriate risk-based capital levels with respect to modified residential mortgage loans in calculating their risk-based capital ratios for the second quarter 2009.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[19] Under regulations issued by the Small Business Administration,[20] a small entity includes a commercial bank, bank holding company, or savings association with assets of $175 million or less (a small banking organization). As of December 31, 2008, there were approximately 2,586 small bank holding companies, 394 small savings associations, 850 small national banks, 432 small State member banks, and 3,116 small State nonmember banks. As a general matter, the Board's general risk-based capital rules apply only to a bank holding company that has consolidated assets of $500 million or more. Therefore, the changes to the Board's capital adequacy guidelines for bank holding companies will not affect small bank holding companies.

This rulemaking does not involve the issuance of a notice of proposed rulemaking and, therefore, the requirements of the RFA do not apply. However, the agencies note that the rule does not impose any additional obligations, restrictions, burdens, or reporting, recordkeeping or compliance requirements on banks or savings associations, including small banking organizations, nor does it duplicate, overlap or conflict with other Federal rules. The rule also will benefit small banking organizations that are subject to the agencies' general risk-based capital rules by allowing mortgage loans modified under the Program to retain the risk weight assigned to the loan prior to the modification. Further, the agencies are requesting public comment on this rule and will modify the rule as appropriate after reviewing the comments.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the agencies have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

OCC/OTS Executive Order 12866

Executive Order 12866 requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be ''significant regulatory actions.'' Significant regulatory actions include, among other things, rulemakings that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' The OCC and the OTS each determined that its portion of the interim final rule is not a significant regulatory action under Executive Order 12866.

OCC/OTS Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995[21] (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS each have determined that its interim final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA required the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this proposed rule easier to understand. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225

Administrative practice and Procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

[18] *See* 12 U.S.C. 4802(b)(1). Other exceptions to this calendar-quarter requirement also exist that are not relevant here.

[19] *See* 5 U.S.C. 603(a).

[20] *See* 13 CFR 121.201.

[21] *See* Public Law 104–4.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons stated in the common preamble, the Office of the Comptroller of the Currency amends Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In appendix A to part 3, in section 3, revise paragraph (a)(3)(iii) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(iii) Loans secured by first mortgages on one-to-four family residential properties, either owner occupied or rented, provided that such loans are not otherwise 90 days or more past due, or on nonaccrual or restructured. It is presumed that such loans will meet the prudent underwriting standards. For the purposes of the risk-based capital guidelines, a loan modified solely pursuant to the U.S. Department of Treasury's Making Home Affordable Program will not be considered to have been restructured.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons stated in the common preamble, the Board of Governors of Federal Reserve System amends parts 208 and 225 of Chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 continues to read as follows:

Authority : 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 4. In appendix A to part 208, revise Section III. C.3., to read as follows:

Appendix A to Part 208–Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. * * *

C. * * *

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [41] on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,[42] that meet certain criteria.[43] Loans included in this category must have been made in accordance with prudent underwriting standards;[44] be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. For purposes of this 50 percent risk weight category, a loan modified solely pursuant to the U. S. Department of Treasury's Making Home Affordable Program will be considered to be performing in accordance with its original terms. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the institution. Also included in this category are privately-issued mortgage-backed securities provided that

(1) The structure of the security meets the criteria described in section III(B)(3) above;

(2) If the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;

(3) If the security is backed by privately issued mortgage-backed securities, each underlying security qualifies for the 50 percent risk category; and

(4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due.

Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

The instructions to the Call Report also discuss the treatment of loans, including multifamily housing loans, that are sold

[41] If a bank holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the loan-to-value ratio and assigning a risk weight.

[42] Loans that qualify as loans secured by 1-to 4-family residential properties or multifamily residential properties are listed in the instructions to the commercial bank Call Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. Such loans to builders will be considered prudently underwritten only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (*i.e.,* has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.,* has a firm written commitment for permanent financing of the home upon completion).

[43] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[44] Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the bank's own appraisal guidelines.

subject to a pro rata loss sharing arrangement. Such an arrangement should be treated by the selling bank as sold (and excluded from balance sheet assets) to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. In such a transaction, from the standpoint of the selling bank, the portion of the loan that is treated as sold is not subject to the risk-based capital standards. In connection with sales of multifamily housing loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis, these other loss sharing arrangements are taken into account for purposes of determining the extent to which such loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same as prescribed for reporting purposes in the instructions to the Call Report.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 5. The authority for part 225 continues to read as follows:

Authority : 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 6. In appendix A to part 225, revise section III.C.3., to read as follows:

Appendix A to Part 225–Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [48] on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,[49] that meet certain criteria.[50] Loans included in this category must have been made in accordance with prudent underwriting standards;[51] be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. For purposes of this 50 percent risk weight category, a loan modified or restructured solely pursuant to the U.S. Department of Treasury's Making Home Affordable Program will be considered to be performing in accordance with its original terms. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the institution. Also included in this category are privately-issued mortgage-backed securities provided that:

(1) The structure of the security meets the criteria described in section III(B)(3) above;

(2) if the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties, each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;

(3) If the security is backed by privately-issued mortgage-backed securities, each underlying security qualifies for the 50 percent risk category; and

(4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due. Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

* * * * *

[48] If a banking organization holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the loan-to-value ratio and assigning a risk weight.

[49] Loans that qualify as loans secured by 1- to 4-family residential properties or multifamily residential properties are listed in the instructions to the FR Y–9C Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. Such loans to builders will be considered prudently underwritten only if the bank holding company has obtained sufficient documentation that the buyer of the home intends to purchase the home (*i.e.,* has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.,* has a firm written commitment for permanent financing of the home upon completion).

[50] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[51] Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the banking organization's own appraisal guidelines.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority for Issuance

■ For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends Part 325 of Chapter III of Title 12, Code of the Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1814(a), 1815(b), 1816, 1818(a), 1818(b), 1815, 1818(a), 1818(b), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790, (12 U.S.C. 1831n, note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

■ 8. Amend Appendix A to part 325 by revising footnote 39 to read as follows:

Appendix A to Part 325—Statement of Policy on Risk Based Capital

* * * * *

II * * *

C. * * *

* * * * *

[39] This category would also include a first-lien residential mortgage loan on a one-to-four family property that was appropriately assigned a 50 percent risk weight pursuant to this section immediately prior to modification under the Making Home Affordable Program established by the U.S. Department of Treasury, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk

weight. In addition, real estate loans that do not meet all of the specified criteria or that are made for the purpose of property development are placed in the 100 percent risk category.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For reasons set forth in the common preamble, the Office of Thrift Supervision amends part 567 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

■ 9. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 10. Section 576.1 is amended by adding paragraph (4) to the definition *Qualifying mortgage loan* to read as follows:

§ 576.1 Definitions.

* * * * *

Qualifying mortgage loan.

* * * * *

(4) A loan that meets the requirements of this section prior to modification under the U.S. Department of Treasury's Making Home Affordable Program may be included as a *qualifying mortgage loan,* so long as the loan is not 90 days or more past due.

* * * * *

Dated: June 15, 2009.

John C. Dugan,

Comptroller of Currency.

By order of the Board of Governors of the Federal Reserve System, June 24, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington DC, this 23rd day of June 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: June 17, 2009.

By the Office of the Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–15507 Filed 6–29–09; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD; Amendment 39–15952; AD 2009–12–51]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting emergency airworthiness directive (AD) 2009–12–51 that was sent previously to all known U.S. owners and operators of Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. This AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections. This AD results from reports of oil leaks from certain reduction gearbox (module M05) front casings. The engine manufacturer reported that the lubrication duct plug was not properly bonded/glued in place. We are issuing this AD to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

DATES: This AD becomes effective July 15, 2009 to all persons except those persons to whom it was made immediately effective by emergency AD 2009–12–51, issued on June 4, 2009, which contained the requirements of this amendment. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 15, 2009.

We must receive any comments on this AD by August 31, 2009.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15 for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On June 4, 2009, the FAA issued emergency AD 2009–12–51, that applies to Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. That AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections. This condition, if not corrected, could result in uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. A292 72 0825, Version A, dated May 27, 2009, that describes procedures for visual inspections of affected reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, we issued emergency AD 2009–12–51 to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing. This AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this

AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause existed to make the AD effective immediately on June 4, 2009, to all known U.S. owners and operators of Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. These conditions still exist, and we are publishing the AD in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Code Federal Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–51 Turbomeca S.A.: Amendment 39–15952. Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 15, 2009, to all persons except those persons to whom it was made immediately effective by emergency AD 2009–12–51, issued June 4, 2009, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines if modified by Turbomeca Modification TU332 and fitted with modules M05 as listed by serial number in Figure 1 of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. A292 72 0825, Version A, dated May 27, 2009. These engines are installed on, but not limited to, Eurocopter France AS350B, AS350BA, AS365N, AS350B1, AS350B2, Eurocopter Deutschland GmbH MBB–BK117–C1, Agusta A109K2, and Sikorsky S–76A+, S–76A++ and S–76C helicopters.

Unsafe Condition

(d) This AD results from reports of oil leaks from certain reduction gearbox (module M05) front casings. The engine manufacturer reported that the lubrication duct plug was not properly bonded/glued in place. This condition, if not corrected, could result in loss of the lubrication duct plug, followed by a rapid draining of the oil tank, without indication to the cockpit through low oil pressure warning. This condition can lead to uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

Compliance

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

Initial Visual Inspection Before Further Flight

(f) Before further flight:

(1) Visually inspect the module M05 lubrication duct for oil leakage. Use paragraph 1.C.(1)(a), paragraph 2.A., and Figure 2 of Turbomeca S.A. MSB No. A292 72 0825, Version A, dated May 27, 2009, to do the inspection.

(2) If oil leakage is found, repair the module M05 lubrication duct. Use paragraph

2.B.1, Figure 3, and Figure 4 in Turbomeca S.A. MSB No. A292 72 0825, Version A, dated May 27, 2009, to do the repair.

Repetitive Visual Inspections

(g) If no oil leakage is found, repeat the visual inspection every four flight hours, or after the last flight of each day, whichever comes first.

(h) The actions required by paragraph (g) of this AD may be performed by the owner/operator holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 and 14 CFR 91.417(a)(2)(v).

Optional Terminating Action

(i) As optional terminating action to the repetitive visual inspections in paragraph (g) of this AD, repair the affected modules M05 as specified in paragraph (f)(2) of this AD.

Alternative Methods of Compliance

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

Related Information

(k) European Aviation Safety Agency emergency airworthiness directive 2009–0117–E, dated June 2, 2009, also addresses the subject of this AD.

Contact Information

(l) For further information, contact: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(m) You must use Turbomeca S.A. MSB No. A292 72 0825, Version A, dated May 27, 2009, to identify the serial numbers of modules M05 affected by this AD, and to perform the inspections and repairs required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 22, 2009.

Peter A. White,

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

[FR Doc. E9–15277 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0556; Directorate Identifier 2009–NM–112–AD; Amendment 39–15942; AD 2009–13–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes Powered by Rolls-Royce RB211 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 and –400F series airplanes. This AD requires modifying certain thrust reverser control system wiring to the flap control unit (FCU). This AD results from a report of automatic retraction of the leading edge flaps during takeoff due to indications transmitted to the FCU from the thrust reverser control system. We are issuing this AD to prevent automatic retraction of the leading edge flaps during takeoff, which could result in reduced climb performance and consequent collision with terrain and obstacles or forced landing of the airplane.

DATES: This AD is effective July 6, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 6, 2009.

We must receive comments on this AD by August 31, 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 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: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of automatic retraction of the leading edge flaps during takeoff on a Boeing Model 747–400 airplane powered by Rolls-Royce RB211–524G/H engines. The automatic retraction was due to indications transmitted to the flap control unit (FCU) from the thrust reverser control system. In order to prevent impingement of efflux air from the thrust reversers during landing rollout, the FCU is designed to automatically retract the Group A leading edge flaps when a REV Amber signal is received from either both inboard or both outboard thrust reversers, and the airplane is on the ground. In this event, the first REV amber signal was received prior to V1 (takeoff decision speed). The second REV amber signal was received several seconds later, after takeoff decision speed. At that time, the FCU performed as designed and retracted the Group A leading edge flaps. At rotation the flight crew reported buffeting and stick shaker activation. After liftoff, a signal from the air/ground logic system caused the FCU to send a command to the Group A leading edge flaps to re-deploy after a five-second time delay. Re-deployment of the flaps takes approximately ten to fifteen additional seconds; during re-deployment, the flightcrew again reported buffeting and momentary stick shaker activation. The airplane jettisoned fuel and was landed safely; all four of the thrust reversers deployed and stowed normally after landing.

In addition, one operator reported 12 single-engine REV indications during

takeoff over the past three years, leading to seven rejected takeoffs. The incident described above was the first known simultaneous two-engine event.

These conditions, if not corrected, could result in reduced climb performance during takeoff and consequent collision with terrain and obstacles or forced landing of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–78A2181, dated June 8, 2009. The service information describes procedures for modifying certain thrust reverser control system wiring to the FCU in the P414 and P415 panels. The modification includes re-routing and re-terminating one wire for each engine, and replacing the wire if necessary.

FAA's Determination and Requirements of This AD

No airplanes affected by this AD are on the U.S. Register. 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 on other products of the same type design. This AD requires accomplishing the actions specified in the service information described previously, except as described under ''Difference Between the AD and the Service Information.''

Difference Between the AD and the Service Information

Operators should note that Boeing Alert Service Bulletin 747–78A2181, dated June 8, 2009, recommends that the modification be completed within 90 days (after the issue date of the service bulletin). This AD specifies a compliance time of 60 days. In developing this compliance time, we considered the manufacturer's recommended 90-day compliance time (after June 8, 2009, which is the service bulletin issue date), a risk assessment of the unsafe condition, the scope of work required, and the number of affected airplanes, as well as the time normally required for the rulemaking process to be completed (approximately 30 days). In consideration of both of these factors, we find that a compliance time of 60 days after the effective date of this AD will fall approximately at the same time (calendar date) as the compliance time recommended by the manufacturer, and represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. By adjusting the compliance time interval in this way:

1. Operators will get a full 60 days in which to complete the modification; and

2. The modification can be done within an interval of time that parallels normal scheduled maintenance for most affected operators.

This difference has been coordinated with Boeing.

FAA's Justification and Determination of the Effective Date

Automatic retraction of the leading edge flaps could result in reduced climb performance during takeoff. Such a restriction could result in failure to achieve a minimum rate of climb, and consequent collision with terrain or obstacles or forced landing of the airplane. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the proper functioning of the FCU and 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, and because no airplanes affected by this AD are on the U.S. Register, we find that notice and opportunity for prior public comment hereon are both impracticable and unnecessary 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–2009–0556; Directorate Identifier 2009–NM–112–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:

2009–13–03 Boeing: Amendment 39–15942. Docket No. FAA–2009–0556; Directorate Identifier 2009–NM–112–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400 and –400F series airplanes, certificated in any category; Powered by Rolls-Royce RB211 series engines.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine.

Unsafe Condition

(e) This AD results from a report of automatic retraction of the leading edge flaps during takeoff due to indications transmitted to the flap control unit (FCU) from the thrust reverser control system. The Federal Aviation Administration is issuing this AD to prevent automatic retraction of the leading edge flaps during takeoff, which could result in reduced climb performance and consequent collision with terrain and obstacles or forced landing 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.

Modification

(g) Within 60 days after the effective date of this AD: Modify the thrust reverser control system wiring to the FCU in the P414 and P415 panels in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2181, dated June 8, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(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: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; 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.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 747–78A2181, dated June 8, 2009, 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, 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*.

(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 June 12, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15255 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0066; Airspace Docket No. 09–ACE–1]

Amendment of Class E Airspace; Ord, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Ord, NE. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Evelyn Sharp Field Airport, Ord, NE. This action also updates the geographic coordinates of the airport to coincide with the FAA's National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Evelyn Sharp Field Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 21, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Ord, NE, adding additional controlled airspace at Evelyn Sharp Field Airport, Ord, NE. (74 FR 18167, Docket No. FAA–2009–0066). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Ord, NE, adding additional controlled airspace extending upward from 700 feet above the surface at Evelyn Sharp Field Airport, Ord, NE, for the safety and management of IFR operations. This action also updates the geographic coordinates of the airport to coincide with the FAA's National Aeronautical Charting Office.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Evelyn Sharp Field Airport, Ord, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 1.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE NE E5 Ord, NE [Amended]

Ord, Evelyn Sharp Field Airport, NE
(Lat. 41°37′25″ N., long. 98°57′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Evelyn Sharp Field Airport and within 4 miles each side of the 316° bearing from the airport extending from the 6.5-mile radius to 11.5 miles northwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on June 19, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–15330 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1271; Airspace Docket No. 08–AGL–18]

Amendment of Class E Airspace; Mansfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Mansfield, OH. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Mansfield Lahm Regional Airport, Mansfield, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Mansfield Lahm Regional Airport. This action also updates the airport name to Mansfield Lahm Regional Airport and updates the geographic coordinates of Shelby Community Airport and Willard Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 27, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Mansfield, OH, adding additional controlled airspace at Mansfield Lahm Regional Airport, Mansfield, OH. (74 FR 19030, Docket No. FAA–2008–1271). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Mansfield, OH, adding additional controlled airspace extending upward from 700 feet above the surface at Mansfield Lahm Regional Airport, Mansfield, OH, for the safety and management of IFR operations. This action also updates the airport name to Mansfield Lahm Regional Airport and updates the geographic coordinates of Shelby Community Airport and Willard Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Mansfield Lahm Regional Airport, Mansfield, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL OH E5 Mansfield, OH [Amended]

Mansfield, Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N., long. 82°31′00″ W.)
Galion, Galion Municipal Airport, OH
(Lat. 40°45′12″ N., long. 82°43′26″ W.)
Shelby, Shelby Community Airport, OH
(Lat. 40°52′22″ N., long. 82°41′51″ W)
Willard, Willard Airport, OH
(Lat. 41°02′20″ N., long. 82°43′28″ W.)
Mansfield VORTAC
(Lat. 40°52′07″ N., long. 82°35′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Mansfield Lahm Regional Airport and within a 6.3-mile radius of Galion Municipal Airport, and within a 6.3-mile radius of Shelby Community Airport, and within a 6.3-mile radius of Willard Airport, and within 4 miles each side of the 137° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 11.1 miles southeast of the airport, and within 4 miles each side of the 317° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 10.7 miles northwest of the airport, and within 6.1 miles each side of the Mansfield VORTAC 307° radial extending from the 6.9-mile radius to 13.3 miles northwest of the VORTAC, and within 4.4 miles each side of the Mansfield VORTAC 130° radial extending from the 6.9-mile radius to 13.8 miles southeast of the VORTAC.

* * * * *

Issued in Fort Worth, Texas, on June 19, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–15332 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0051; Airspace Docket No. 09–ASW–3]

Amendment of Class E Airspace; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Ada, OK. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Ada Municipal Airport, Ada, OK. This action also updates the geographic coordinates of the airport to coincide with the FAA's National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Ada Municipal Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Ada, OK, adding additional controlled airspace at Ada Municipal Airport, Ada, OK (74 FR 17439, Docket No. FAA–2009–0051). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Ada, OK, adding additional controlled airspace extending upward from 700 feet above the surface at Ada Municipal Airport, Ada, OK, for the safety and management of IFR operations. This action also updates the geographic coordinates of the airport to coincide with the FAA's National Aeronautical Charting Office.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Ada Municipal Airport, Ada, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW OK E5 Ada, OK [Amended]

Ada Municipal Airport, OK
(Lat. 34°48′15″ N., long. 96°40′16″ W.)
Ada VOR
(Lat. 34°48′09″ N., long. 96°40′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ada Municipal Airport, and within 4 miles each side of the 000° bearing from the airport extending from the 6.5-mile radius to 10.3 miles north of the airport, and within 4 miles each side of the 180° bearing from the airport extending from the 6.5-mile radius to 10.9 miles south of the airport, and within 1.6 miles each side of the 354° radial of the Ada VOR extending from the 6.5-mile radius to 11 miles northeast of the airport.

* * * * *

Issued in Fort Worth, Texas, on June 19, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–15338 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1026; Airspace Docket No. 08–AEA–17]

Establishment of Area Navigation Route Q–42; East-Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a high altitude area navigation (RNAV) route, designated Q–42, extending between the New York-Philadelphia area and the Kirksville, MO, very high frequency omnidirectional range/tactical air navigation (VORTAC) facility. The route will streamline RNAV procedures in the east-central United States by creating a route parallel to the existing Jet Route J–80. This action will help alleviate departure delay issues for westbound aircraft flying from the New York and Philadelphia areas.

DATES: *Effective Date:* 0901 UTC, August 27, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 21, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish area navigation route Q–42 (74 FR 3468). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

In the NPRM, the latitude/longitude for the MAALS waypoint was listed as lat. 40°19′16″ N., long. 76°16′08″ W. The position has since been updated in the National Airspace System Resources (NASR) database as lat. 40°19′19″; N., long. 76°16′11″ W. This is a minor refinement of the position that does not alter the alignment of the route.

With the exception of the editorial change discussed above, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing high altitude area navigation route Q–42 between the Kirksville, MO, VORTAC and the ELIOT, PA, navigation fix. The new route will enhance the flow of air traffic in a major transit corridor, parallel to J–80, and traversing airspace assigned to the New York, Cleveland, Indianapolis, Chicago and Kansas City Air Route Traffic Control Centers.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9S signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a portion of the en route structure to enhance the safe and efficient use of the NAS in the East-Central United States.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a and 311b. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–42 Kirksville, MO (IRK) to ELIOT, PA [New]

IRK	VORTAC	(Lat. 40°08′06″ N., long. 92°35′30″ W.)
STRUK	WP	(Lat. 40°14′04″ N., long. 90°18′22″ W.)
DNV	VORTAC	(Lat. 40°17′38″ N., long. 87°33′26″ W.)
MIE	VOR/DME	(Lat. 40°14′14″ N., long. 85°23′39″ W.)
HIDON	WP	(Lat. 40°10′00″ N., long. 81°37′27″ W.)
BUBAA	WP	(Lat. 40°10′27″ N., long. 80°58′17″ W.)
PSYKO	WP	(Lat. 40°08′37″ N., long. 79°09′13″ W.)
BRNAN	WP	(Lat. 40°08′07″ N., long. 77°50′07″ W.)
MAALS	WP	(Lat. 40°19′19″ N., long. 76°16′11″ W.)
SUZIE	WP	(Lat. 40°27′12″ N., long. 75°58′22″ W.)
ETX	VOR/DME	(Lat. 40°34′52″ N., long. 75°41′02″ W.)
ELIOT	WP	(Lat. 40°49′07″ N., long. 75°07′48″ W.)

* * * * *

Issued in Washington, DC, on June 24, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–15340 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0283; Airspace Docket No. 09–ASW–8]

Establishment of Class D Airspace; Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Fort Worth Spinks Airport, Fort Worth, TX. Establishment of an air traffic control tower at Fort Worth Spinks Airport has made this action necessary for the safety and management of Instrument Flight Rule (IFR) operations at Fort Worth Spinks Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 30, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Fort Worth Spinks Airport, Fort Worth, TX. (74 FR 19910, Docket No. FAA–2009–0283). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace at Fort Worth Spinks Airport, Fort Worth, TX, for the safety and management of IFR operations. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Fort Worth Spinks Airport, Fort Worth, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective

October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Fort Worth Spinks Airport, TX [New]

Fort Worth Spinks Airport, TX
(Lat. 32°33′55″ N., long. 97°18′29″ W.)

That airspace extending upward from the surface up to but not including 3,000 feet MSL within a 4.1-mile radius of Fort Worth Spinks Airport, and within 1 mile each side of the 173° bearing from the airport extending from the 4.1-mile radius to 4.8 miles south of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on June 19, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–15339 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1367; Airspace Docket No. 09–ASW–1]

Establishment of Class E Airspace; Floydada, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Floydada, TX. Controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Floydada Municipal Airport, Floydada, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Floydada Municipal Airport.

DATES: 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Floydada, TX, adding controlled airspace extending upward from 700 feet above the surface, at Floydada Municipal Airport, Floydada, TX. (74 FR 17440, Docket No. FAA–2009–1367). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Floydada Municipal Airport, Floydada, TX, for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds controlled airspace at Floydada Municipal Airport, Floydada, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Floydada, TX [New]

Floydada Municipal Airport, TX
(Lat. 34°00′06″ N, long. 101°19′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Floydada Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on June 19, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–15336 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. FDA–1977–N–0013] (formerly Docket No. 1977N–0094L)

RIN 0910–AF36

Organ-Specific Warnings; Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Final Monograph; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, corrections.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 29, 2009. The document requires important new organ-specific warnings and related labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products. The new labeling informs consumers about the risk of liver injury when using acetaminophen and the risk of stomach bleeding when using nonsteroidal anti-inflammatory drugs (NSAIDs). The document was published with an incorrect Analysis of Impacts section and omitted a reference from the reference section of the final rule. The document was also published with an error in the codified text regarding the introductory sentence to the stomach bleeding warning for NSAIDs. This document replaces the incorrect Analysis of Impacts section with the correct Analysis of Impacts section, adds a reference to the reference section of the final rule, and corrects the codified text.

DATES: *Effective Date*: This final rule is effective April 29, 2010.

Compliance Date: The compliance date for all products subject to this final rule, including products with annual sales less than $25,000, is April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Arlene Solbeck, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–9684, published on April 29, 2009 (74 FR 19385), make the following corrections:

1. Beginning on page 19401 and ending on page 19406, replace section VI. Analysis of Impacts with the following text:

VI. Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

We conclude that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. As discussed in this section, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities, but we lack sufficient information on the distribution of the burden to certify that it is not significant.

The impact on industry, in terms of costs of compliance, are presented in section VI.B of this document and summarized in table 2 of this document. The societal costs and benefits of this final rule are summarized in table 3 of section VI.B of this document.

A. Need for the Rule

In 2002, an FDA Advisory Committee recommended changes to the labeling of OTC acetaminophen and NSAID drug products to better inform consumers about the active ingredients and possible side effects caused by improper use. Current labels provide inadequate information about the risk of improper use. Although we consider acetaminophen to be safe and effective when labeled and used correctly, using too much can lead to liver injury and death. Similarly, the use of NSAIDs can lead to stomach bleeding and kidney damage. The number of cases of injury reported is a very low percentage of the total use of OTC acetaminophen and NSAID drug products. For many people, the risks are quite low because they use these products only occasionally. The risks may be greater for people who use these products more frequently and/or do not follow the labeling information on the package. The risk of injury may be increased for certain populations and under certain conditions of use.

There are multiple reasons for unintentional acetaminophen overdoses. First, acetaminophen is an active ingredient in a wide variety of both OTC and prescription drug products. For prescription products, the immediate container may not state that the product contains acetaminophen or state the maximum daily dose limit. Consumers may often fail to recognize the presence and amount of acetaminophen ingredients in OTC and prescription drug products. This lack of knowledge can result in a person using two different products containing acetaminophen simultaneously. Moreover, many consumers are unaware that exceeding the recommended dosage for acetaminophen can lead to unintentional overdosing and cause potential harm. Based on the evidence discussed in this document, we find that there is sufficient incidence of liver injury associated with acetaminophen to warrant new labeling, and that without the new labeling, acetaminophen products would no longer be considered generally recognized as safe and effective and not misbranded for OTC use.

Results of several large-scale clinical studies performed in the United States and in other countries have established that the use of NSAIDs is an important risk factor for serious stomach adverse events, especially bleeding. The risk is higher for certain populations. Based on the evidence discussed in this document, we further find that NSAIDs increase the risk for stomach adverse events and that, without a new stomach bleeding warning in the labeling for NSAIDs, the products would no longer be considered generally recognized as safe and effective and not misbranded for OTC use.

The purpose of this final rule is to amend our OTC drug labeling regulations to include new warnings and other labeling requirements to advise consumers of potential risks and when to consult a doctor (see table 1 in section II.B.2 of this document). We are also removing the alcohol warning in § 201.322 and incorporating new alcohol-related warnings and other labeling for all OTC acetaminophen and NSAID drug products. We are requiring certain warning information targeted to age-specific populations. In addition, we are requiring that the presence of acetaminophen or any NSAID would appear prominently on a product's principal display panel (PDP). Without this final rule, the labeling of these products will not provide sufficient warnings of risks to consumers.

B. Impact of the Rule

We contracted Eastern Research Group, Inc. (ERG) to assess the costs and benefits of the proposed rule on which this final rule is based. The full ERG report (Ref. 56), including details on methods, assumptions, cost calculations, and findings, is on file in the Division of Dockets Management (71 FR

77314 at 77341). The most significant change from the proposal is the requirement that warning statements appear on both the outer container and on the immediate container. We, therefore, contracted with ERG to perform an updated store survey and analysis to assess the costs of the changes in this final rule. ERG's 2008 ''Addendum to the Cost Benefit Analysis: Final Internal Analgesic, Antipyretic, and Antirheumatic Drug Products Rulemaking'' (Ref. 57) is also on file with the Division of Dockets Management. Most of ERG's methods, assumptions and analysis used for the proposed rule remain unchanged for this final rule. The following is a summary of ERG's findings.

1. Cost of Compliance

Manufacturers and marketers of OTC acetaminophen and NSAID drug products would incur one-time costs to revise affected product labeling to comply with this rule. We estimated costs for a major labeling revision using a pharmaceutical labeling revision cost model. We used an implementation period of 12 months. The labeling model is described in detail in Appendix A of the ERG report cited in the 2006 proposed rule.

To develop the original model, we and ERG interviewed pharmaceutical representatives from regulatory, legal, manufacturing controls, and labeling departments to collect information on labeling change cost components, type of personnel affected, and costs. The model incorporates data on average industry costs by company size, including, where applicable, modifications to packaging configurations. Industry consultants also provided information on model inputs related to the OTC acetaminophen and NSAID drug product industry, the labeling revision process, the costs of modifying labeling, and the frequency of packaging reconfiguration changes.

The baseline for this final rule is full compliance with the format and content requirements for OTC drug product labeling in 21 CFR 201.66 established in a 1999 final rule (64 FR 13254, March 17, 1999). In the 1999 final rule, we accounted for the total incremental costs to comply with the format and content requirements, including using a 6 point font size and related costs for increased package size and longer labeling where applicable. We note that, although some forms of packaging (for small quantities) have been granted extensions on compliance dates, many packaging alternatives now exist that can accommodate the format and content requirements.

Manufacturers routinely redesign labels at varying intervals and have standardized procedures in place for complying with our requirements. Based on consultant input, manufacturers of OTC acetaminophen and NSAID drug products typically redesign one-half of their labels every 2 years, the remainder every 3 years. The costs of labeling change depend on the type of labeling (e.g., carton and container label) and whether there is sufficient labeling space to accommodate the proposed changes.

There are an estimated 22,500 OTC acetaminophen and NSAID drug product stock keeping units (SKUs), split evenly among branded and private labels, according to an industry consultant.[9] We assume that branded SKUs are distributed as follows by firm size: 50 percent small, 17 percent medium, and 33 percent large. Based on ERG's store survey, roughly 98 percent of OTC acetaminophen and NSAID drug products were packaged in containers within cartons and 2 percent in containers without outer cartons. About 5 percent of the 98 percent of products packaged in cartons contained blister packs. For the final rule, ERG revised the distribution of SKUs among OTC acetaminophen and NSAID drug products as follows: Acetaminophen, 32 percent; NSAIDs except ibuprofen, 32 percent; ibuprofen, 34 percent; and combinations of acetaminophen and NSAIDs, 2 percent.[10]

To assess the increase in label space and package size requirements, ERG purchased a variety of OTC IAAA packaging arrangements. ERG then determined the current baseline warning language and evaluated spacing constraints on packaging. Consistent with findings discussed in the proposed rule, ERG concluded that all current packaging except blister packs can accommodate the required changes in this final rule without altering label sizes, package sizes, or adding nonstandard labels. For blister packages, all outer cartons were judged to have adequate label space available. With respect to the immediate container, blister packs for OTC acetaminophen were judged able to accommodate warning statements, but the OTC NSAID blister packs could not. Therefore, ERG estimated that for OTC NSAIDs, both the inner blister pack container and the outer carton would need to be expanded. This assumption allows for the same number of unit doses per card and a larger carton to accommodate the larger cards.

Table 2 of this document presents the estimated total one-time and recurring annual costs of compliance with this final rule in 2002 dollars. The total estimated first-year one-time costs to revise labeling are $62.7 million. Recurring costs are $1.5 million per year. The increases in cost from the proposed rule are driven by the increased percentage of OTC ibuprofen SKUs, the doubling of packaging changes needed due to the final regulation, and the need to change package sizes for OTC NSAID blister packs.

TABLE 2.—ESTIMATED TOTAL ONE-TIME AND RECURRING ANNUAL COSTS OF COMPLIANCE WITH THIS RULE (IN 2002 DOLLARS)

Company Type	Product Type				
	Acetaminophen	Ibuprofen	NSAIDs Except Ibuprofen	Combinations of Acetaminophen and NSAIDs	Total
Total one-time costs (expressed as millions of dollars)					
Small brand	$2.2	$4.2	$4.0	$0.2	$10.7
Medium brand	$2.2	$3.1	$2.9	$0.2	$8.4
Large brand	$6.1	$8.5	$8.0	$0.5	$23.0
Private label	$4.5	$8.0	$7.5	$0.5	$20.5
Total	$15.0	$23.8	$22.4	$1.4	$62.7
Total recurring costs (expressed as millions of dollars)					
Small brand	$0.000	$0.089	$0.050	$0.005	$0.145

[9] Estimates of affected SKUs are 18,000 by FDA and 20,000 to 25,000 by industry consultant. This number of SKUs includes products marketed by manufacturers, repackers, relabelers, and distributors.

[10] ERG conducted a sensitivity analysis using the same distribution of products at proposal and found that costs would have been about 3 percent lower. The former distribution was: Acetaminophen, 45 percent; NSAIDs except ibuprofen, 38 percent; ibuprofen, 15 percent; and combinations of acetaminophen and NSAIDs, 2 percent.

TABLE 2.—ESTIMATED TOTAL ONE-TIME AND RECURRING ANNUAL COSTS OF COMPLIANCE WITH THIS RULE (IN 2002 DOLLARS)—Continued

Company Type	Product Type				
	Acetaminophen	Ibuprofen	NSAIDs Except Ibuprofen	Combinations of Acetaminophen and NSAIDs	Total
Medium brand	$0.000	$0.065	$0.037	$0.004	$0.106
Large brand	$0.000	$0.467	$0.264	$0.026	$0.756
Private label	$0.000	$0.290	$0.164	$0.016	$0.470
Total	$0.000	$0.911	$0.515	$0.050	$1.476

2. Alternatives

We considered and rejected the following alternatives: (1) Not adding the new information to OTC acetaminophen and NSAID drug product labeling and (2) a longer implementation period. We do not consider either of these approaches acceptable because they do not ensure that consumers will have the most current labeling information needed for the safe and effective use of these products. We consider this final rule the least burdensome alternative that meets the public health objectives of this rule.

3. Benefits

Our final rule requirements are intended to enhance consumer awareness and knowledge of the active ingredient in OTC acetaminophen and NSAID drug products. These new warnings include:

- New label warnings
- Age-specific information
- Advising consumers of potential risks and when to consult a doctor
- Prominent display of active ingredients on the PDP

The revised alcohol statements are intended to provide clearer warnings to high-risk individuals about product use. The overall intent of these requirements is to reduce the liver injury and stomach bleeding episodes that occur due to unintentional overdosing with these drugs. The requirements are also intended to reduce the incidence of adverse health outcomes among high-risk subpopulations consuming proper doses of OTC acetaminophen and NSAID drug products (e.g., people with liver disease or people prone to stomach bleeding).

Our estimate of the potential benefits of this final rule remains unchanged from the estimate discussed in the proposed rule. We estimated benefits assuming a reduction of from 1 percent to 3 percent in unintentional overdosing with OTC acetaminophen and NSAID drug products. Reducing the number of unintentional overdoses with OTC acetaminophen and NSAID drug products would reduce the number of emergency room visits, hospitalizations, and deaths attributable to these unintentional overdoses. The monetary value of these avoided adverse events, in 2007 dollars, is shown in table 3 of this document.

4. Benefit-Cost Comparison

Table 3 of this document summarizes the present value over 10 years of the compliance costs and the benefits of a 1 percent and 3 percent reduction in deaths and hospitalizations using discount rates of 7 and 3 percent. We converted ERG's present value comparison of costs and benefits to 2007 dollars using the Gross Domestic Product index of 1.0948 relative to 2001. The low end of the benefits range uses an estimate of $5 million as the value of a statistical life and includes savings from reduced hospitalizations. The high end of the benefits range uses an updated value of $7 million per statistical life and does not include savings from reduced hospitalizations. The costs of this final rule exceed the benefits using the most conservative assumption of benefits. The benefits exceed the costs of this rule at the mid to upper end of the benefits range. Comparing the present value of costs and benefits over 10 years, in 2007 dollars, costs would exceed benefits if this rule reduced deaths and hospitalizations by 2 percent or more.

TABLE 3.—PRESENT VALUE AND ANNUALIZED PRESENT VALUE OF COMPLIANCE COSTS AND POTENTIAL BENEFITS OVER 10 YEARS (IN 2007 DOLLARS)

Discount Rate	Present Value (millions of dollars)		Annualized Present Value Over 10 Years (millions of dollars)	
	Costs[1]	Benefits[2]	Costs	Benefits[2]
7 percent	$77.8	$45.1 - $172.8	$11.1	$6.4 - $24.6
3 percent	$79.8	$53.8 - $202.0	$9.4	$6.3 - $23.7

[1] The present value of compliance costs over 10 years in 2001 dollars equals $71.0 million at 7 percent and $72.9 million at 3 percent.
[2] Assumes that this final rule would reduce adverse events by 1 to 3 percent.

5. Break-Even Analysis

We note that we lack the data needed to confidently predict a percent reduction in serious cases related to unintentional overdosing. Because of the uncertainty in these estimates, we estimated an annual average number of adverse events that would need to be avoided over a 10 year period to reach a break-even point (i.e., the present value of the cost of compliance divided by the present value of the monetary value of avoiding an adverse event each year for 10 years). The following calculations are based on 2001 dollars, which will not affect the estimated break-even values to be calculated. For benefits to equal costs, this final rule would need to prevent about 2 deaths each year over 10 years [1.9 deaths ($71.0 million/$37.6 million at a 7 percent discount rate) and 1.7 deaths ($72.9 million/$43.9 million at a 3 percent discount rate)]. This estimate of deaths avoided is based on a value of $5 million per statistical life. Alternatively, if no deaths are avoided, the final rule would need to prevent about 1,058 hospitalizations each year over the 10-year period at the 7 percent discount rate ($71.0 million/$67,156), and 928 hospitalizations a year at the 3 percent discount rate ($72.9 million/$78,513). This estimate of hospitalizations avoided is based on the lowest monetized value of a poisoning episode requiring hospitalization: $8,936 per episode over 10 years at a 7 percent discount rate.

Although we lack evidence to predict with certainty a specific level of reduction in adverse events, if we assume only a 2 percent reduction in the illnesses and deaths analyzed, the benefits of this final rule

outweigh the costs. We find that this final rule will enhance public health and promote the safer use of OTC acetaminophen and NSAID drug products.

6. Final Regulatory Flexibility Analysis

This economic analysis, together with other relevant sections of this document, serves as our final regulatory flexibility analysis, as required under the Regulatory Flexibility Act. For our preliminary regulatory flexibility analysis, we calculated the average annualized compliance costs for firms in each size category and determined that the average annualized compliance costs totaled less than 1 percent of average receipts for all firm sizes. In 2007 dollars, the estimated annualized present value cost per SKU is $492 (i.e., $11.1 million divided by 22,500 SKUs) using a 7 percent discount rate over 10 years, and $416 per SKU ($9.4 million divided by 22,500 SKUs) using a 3 percent discount rate over 10 years. For private label SKUs only, the annualized present value cost per SKU is $321 ($3.6 million divided by 11,250 SKUs) using a 7 percent discount rate over 10 years, or $271 per private label SKU ($3.0 divided by 11,250 SKUs) using a 3 percent discount rate over 10 years. Similar to the proposed rule, the average annualized compliance costs of the final rule remain under 1 percent of average receipts for all firm sizes. Therefore, we tentatively conclude that this final rule will not have a significant economic impact on a substantial number of small entities.

2. On page 19407, in the second column, add the following reference:

57. Eastern Research Group, Inc., ''Addendum to the Cost Benefit Analysis: Final Internal Analgesic, Antipyretic and Antirheumatic Drug Products Rulemaking,'' Final Report, July 30, 2008.

§ 201.326 [Corrected]

■ 3. On page 19408, in the third column, correct the first sentence in § 201.326(a)(2)(iii)(A) to read as follows: ''Stomach bleeding warning [heading in bold type]: This product contains an NSAID, which may cause severe stomach bleeding.''

■ 4. On page 19409, in the first column, correct the first sentence in § 201.326(a)(2)(iv)(A)(*1*) to read as follows: ''Stomach bleeding warning [heading in bold type]: This product contains an NSAID, which may cause severe stomach bleeding.''

■ 5. On page 19409, in the second column, correct the first sentence in § 201.326(a)(2)(v)(A) to read as follows: ''Stomach bleeding warning [heading in bold type]: This product contains an NSAID, which may cause severe stomach bleeding.''

Dated: June 23, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–15403 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1216]

RIN 1625–AA09

Drawbridge Operation Regulations; Potomac River, Between MD and VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across the Potomac River between Alexandria, VA and Oxon Hill, MD. This rule is being made in an effort to minimize the potential for major regional vehicular traffic impacts and consequences during bridge openings of the draw span while still providing for reasonable needs of marine traffic.

DATES: This rule is effective July 30, 2009.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1216 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: 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, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at 757–398–6222. 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:

Regulatory Information

On February 9, 2009, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulations; Potomac River, Between MD and VA'' (74 FR 6359). We received no comments on the published NPRM. No public meeting was requested, and none was held.

Background and Purpose

On July 2, 2008, we published a temporary regulation entitled ''Drawbridge Operation Regulations; Potomac River, Between MD and VA,'' in the **Federal Register** (73 FR 37806). While construction continued, the temporary rule allowed the drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. until and including March 1, 2009.

The MD State Highway Administration and the VA Department of Transportation, co-owners of the drawbridge, requested to permanently maintain the Woodrow Wilson Bridge in the closed-to-navigation position each day from 10 a.m. to 2 p.m. This request was made in an effort to minimize the potential for major regional vehicular traffic impacts and consequences during bridge openings.

In reaching our decision to implement this request, we balanced the large volume of vehicular traffic moving across the bridge against the lack of large commercial vessel traffic seeking to use the bridge during this period. The Woodrow Wilson Bridge is part of the Capital Beltway Interstate Highway System. It is a critical component of that system for both local and regional traffic moving into, around, and through the Washington, DC metro area. Bridge openings cause significant traffic delays.

From a river-user standpoint, the coordinators for the construction of the new Woodrow Wilson Bridge Project have received no requests from boaters or mariners to open the bridge during the 10 a.m. to 2 p.m. timeframe since the first temporary deviation was issued in late June 2006. In fact, no requests have been received for an opening of the new bridge at all since July 3, 2006. Finally, the coordinators have received no complaints on the 10 a.m. to 2 p.m. restriction. This rule will affect only vessels with mast heights of 75 feet or greater. Furthermore, all operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a). As discussed in the Notice of Proposed Rulemaking, currently, 33 CFR 117.255(a)(2)(i) states (paraphrasing) that the drawbridge need not open for the passage of a commercial vessel, Monday through Friday, 5 a.m. to 10 a.m. and 2 p.m. to 8 p.m. This final rule connects the two time periods by extending the operating

regulation to cover the entire period from 5 a.m. until 8 p.m. We considered the alternative of narrowing the mid-day window from 10 a.m. to 2 p.m. to make it a shorter window. However, since there were no vessel requests for this time period at all, we rejected this option. We also considered taking no action at all; however, due to the high volume of vehicle traffic using the bridge, we rejected this option as well.

Discussion of Comments and Changes

The Coast Guard received no comments to the NPRM. Therefore, we will implement a final rule with no changes to the NPRM. If commercial vessel traffic patterns change, we will revisit the operating requirements. Questions or concerns regarding the opening of the Woodrow Wilson Memorial Bridge may be directed to the person identified in the For Further Information Section of this final rule. Requests to change the operating schedule for this bridge should be sent to the Fifth District Commander in Portsmouth, Virginia (See 33 CFR 117.8).

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. We reached this conclusion based on the fact that these changes have only a minimal impact on maritime traffic transiting through the bridge. All operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a), and mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

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 could affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the bridge, between the hours of 10 a.m. and 2 p.m., Monday through Friday.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule only adds minimal restrictions to the movement of navigation. All operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a). Additionally, mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might 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 Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.255 revise paragraph (a)(2)(i) to read as follows:

§ 117.255 Potomac River.

* * * * *

(a) * * *

(2) * * *

(i) From Monday through Friday (except Federal holidays), 5 a.m. to 8 p.m.

* * * * *

Dated: June 25, 2009.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E9–15559 Filed 6–26–09; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 686, 690, and 691

[Docket ID ED–2009–OPE–0001]

RIN 1840–AC96

Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; correction.

SUMMARY: The Department of Education is correcting an interim final regulation that was published in the **Federal Register** on May 1, 2009. These interim final regulations implemented provisions of the Higher Education Act of 1965 (HEA), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Higher Education Opportunity Act of 2008 (HEOA), related to the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Programs.

DATES: Effective July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 8019, Washington, DC 20006–8544. Telephone: (202) 219–7078.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

■ In FR Doc. E9–10094, appearing on page 20210 in the **Federal Register** on May 1, 2009, the following corrections are made:

§ 691.63 [Corrected]

■ 1. On page 20224, in the second column, in § 691.63, in amendment 19, instruction G is corrected to read as follows: ''Revising paragraph (c)(3).''

■ 2. On page 20224, in the second column, the regulatory text of § 691.63 is corrected by setting out the revised paragraph (c)(3) as follows:

§ 691.63 Calculation of a grant for a payment period.

* * * * *

(c) * * *

(3) Multiplying his or her ACG or National SMART Grant annual award determined under paragraph (c)(2) of this section by the following fraction as applicable: or

In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; or In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; and

* * * * *

Dated: June 24, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–15369 Filed 6–29–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 440 and 441

[CMS–2287–F2; CMS–2213–F2; CMS 2237–F]

RIN 0938–AP75

Medicaid Program: Rescission of School-Based Administration/Transportation Final Rule, Outpatient Hospital Services Final Rule, and Partial Rescission of Case Management Interim Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule finalizes our proposal to rescind the December 28, 2007 final rule entitled, ''Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School;'' the November 7, 2008 final rule entitled, ''Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition;'' and certain provisions of the December 4, 2007 interim final rule entitled, ''Optional State Plan Case Management Services.'' These regulations have been the subject of Congressional moratoria and have not yet been implemented (or, with respect to the case management interim final rule, have only been partially implemented) by CMS. In light of concerns raised about the adverse effects that could result from these regulations, in particular, the potential restrictions on services available to beneficiaries and the lack of clear evidence demonstrating that the approaches taken in the regulations are warranted, CMS is rescinding the two final rules in full, and partially rescinding the interim final rule. Rescinding these provisions will permit further opportunity to determine the best approach to further the objectives of the Medicaid program in providing necessary health benefits coverage to needy individuals.

DATES: *Effective Date:* These regulations are effective on July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Sharon Brown (410) 786–0673 or Judi Wallace (410) 786–3197, for issues related to the School-Based Administration/Transportation final rule.

Jeremy Silanskis (410) 786–1592, for issues related to the Outpatient Hospital Services final rule.

Jean Close (410) 786–2804 or Melissa Harris (410) 786–3397, for issues related to the Case Management interim final rule.

SUPPLEMENTARY INFORMATION:

I. Background

A. Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School

Under the Medicaid program, Federal payment is available for the costs of administrative activities as found necessary by the Secretary for the proper and efficient administration of the State plan. On December 28, 2007, we published a final rule entitled, ''Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School'' (hereinafter referred to as the School-Based Administration/Transportation final rule (72 FR 73635)), to eliminate Federal Medicaid payment for the costs of certain school-based administrative and transportation activities based on a Secretarial finding that these activities are not necessary for the proper and efficient administration of the Medicaid State plan and are not within the definition of the optional transportation benefit. Under the final rule, Federal Medicaid payments were not available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, or for transportation between home and school. Federal financial participation (FFP) remained available for covered services furnished at or through a school that are included in a child's individualized education program (IEP), and for transportation from school to a provider in the community for a covered service. FFP also remained available for the costs of school-based Medicaid administrative activities conducted by employees of the State or local Medicaid agency, and for transportation to and from a school for children who are not yet school age but are receiving covered direct medical services at the school.

The December 28, 2007, School-Based Administration/Transportation final rule became effective on February 26, 2008. Subsequent to publication of the final rule, section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173) imposed a moratorium until June 30, 2008, that precluded CMS from imposing any restrictions contained in the rule that are more stringent than those applied as of July 1, 2007. Section 7001(a)(2) of the Supplemental Appropriations Act of 2008 (Pub. L. 110–252) extended this moratorium until April 1, 2009; and section 5003(b) of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) (Pub. L. 111–5) further extended the moratorium until July 1, 2009.

B. Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition

Outpatient hospital services are a required service under Medicaid. On November 7, 2008, we published a final rule entitled, ''Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition'' (hereinafter referred to as Outpatient Hospital Services final rule), to introduce new limitations on which treatments could be billed and paid as an outpatient hospital service, thereby altering the pre-existing definition of ''outpatient hospital services.'' The final rule became effective on December 8, 2008. Section 5003(c) of the Recovery Act precludes CMS from taking any action to implement the final rule with respect to services furnished between December 8, 2008 and June 30, 2009.

C. Optional State Plan Case Management Services

On December 4, 2007, we published an interim final rule entitled, ''Optional State Plan Case Management Services'' (hereinafter referred to as the Case Management interim final rule (72 FR 68077)), that revised current Medicaid regulations to incorporate changes made by section 6052 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171). In addition, we placed new limitations on the services and activities that could be covered and paid as an optional targeted case management (TCM) service or optional case management service.

The interim final rule became effective on March 3, 2008. Section 7001(a)(3)(B)(I) of the Supplemental Appropriations Act imposed a partial moratorium until April 1, 2009, precluding CMS from taking any action to impose restrictions on case management services that were more restrictive than those in effect on December 3, 2007. The law contained an exception for the portion of the regulation as it related directly to implementing the definition of case management services and targeted case management services. That partial moratorium was extended by section 5003(a) of the Recovery Act until July 1, 2009.

II. Provisions of the Proposed Regulation and Response to Comments

Since the publication of these final regulations, we have received additional public input about the adverse effects that could result from these regulations. In addition, the statutory moratoria indicate strong concern in Congress about the effects of these regulations. In particular, we have become aware that the provisions of these rules could result in restrictions on services available to beneficiaries and there is a lack of clear evidence demonstrating that the approaches taken in the regulations are warranted at this time.

On May 6, 2009, we published a proposed rule (74 FR 21230) in the **Federal Register** to rescind the November 7, 2008 Outpatient Hospital Services final rule; the December 28, 2007 School-Based Administration/Transportation final rule; and certain provisions of the December 4, 2007 Case Management interim final rule. The May 6, 2009 proposed rule solicited public comments on our proposal to rescind these rules and to aid our consideration of the many complex questions surrounding these issues and the need for regulation in these areas.

We received a total of 556 timely comments from State officials, school districts and consortia, educational organizations, child advocacy groups, health care organizations, school nurses, parents, teachers, school officials, providers, and other interested individuals. All comments were reviewed and analyzed. After associating like comments, we placed them in categories based on subject matter. The commenters were overwhelmingly supportive of our proposal to rescind the School-Based Administration/Transportation final rule, the Outpatient Hospital Services final rule, and portions of the Case Management interim final rule. Summaries of the public comments and our responses to those comments are set forth under the appropriate headings below.

A. Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School

We proposed to rescind the December 28, 2007 School-Based Administration/Transportation final rule in its entirety. The proposed rescission was based on concerns that the adverse consequences of the final rule may be more significant than previously assumed, and that the consideration of alternative approaches may be warranted. Since issuing the School-Based Administration/Transportation final rule, we became aware that the limitations on Federal Medicaid funding under the final rule could adversely affect State outreach and enrollment efforts in schools, and therefore limit services for families in need. We had previously assumed that, since such activities were within the scope of the overall mission of the schools, the activities would continue with funding from other sources available for educational activities. Conversely, we thought that State Medicaid agencies had sufficient resources to outsource its employees in schools to absorb these functions. In summary, we were concerned that the assumptions underlying the promulgation of the rule may have been invalid, and that implementation of the rule could adversely affect Medicaid beneficiaries. We requested comments on this issue.

Moreover, we were concerned that there is insufficient evidence on the need for the particular approach taken by the final rule. The oversight reviews that we cited in issuing the final rule, indicating some deficiencies in procedures for claiming school-based administrative expenditures and necessary transportation, were several years old and based on data collected more than 5 years ago. These claims did not reflect CMS guidance issued after the review data was collected; nor did they reflect the greater administrative oversight and technical assistance that we have made available more recently. Moreover, since CMS has tools at its disposal to address inappropriate claiming that could arise in any setting, we would continue to monitor claims and evaluate the efficacy of these tools in addressing any claiming issues even in the absence of this rule.

In light of these concerns, we proposed to rescind the provisions of the final rule while we further review the underlying issues and determine whether a different approach is necessary, and revise the regulations to remove the regulatory provisions added by the December 28, 2007 final rule. We proposed to apply the policies in effect before the December 28, 2007 final rule became effective, as set forth in the May 2003 Medicaid School-Based Administrative Claiming Guide which provides guidance to States on school-based administrative claiming and school transportation.

Specifically, we proposed to revise § 431.53(a) and § 440.170(a) to remove language indicating that, for purposes of Medicaid reimbursement, transportation does not include transportation of school-age children from home to school and back when a child is receiving a Medicaid-covered service at school. In addition, we proposed to remove § 433.20, which provides that Federal financial participation (FFP) under Medicaid is not available for expenditures for administrative activities by school employees, school contractors, or anyone under the control of a public or private educational institution.

Comment: Many commenters applauded CMS' decision to reconsider the merits of the School-Based Administration/Transportation final rule. Commenters stated that the final rule was ''bad public policy'' and that efforts to rescind the rule are an acknowledgment of the impact the final rule would have had on a myriad of stakeholders.

Response: We appreciate the commenters' support of our proposal to rescind the School-Based Administration/Transportation final rule. After careful consideration of the concerns raised by commenters, we agree that the final rule should be rescinded.

Comment: The largest number of comments in support of rescinding the School-Based Administration/Transportation final rule focused on funding issues, noting that rescission will enable school districts and many others to continue receiving the desperately needed Federal funds to support school-based outreach, enrollment assistance, and improved access to medical and transportation services. Many commenters stated that students who receive specialized transportation and medical needs require schools to expend large sums of money and that reducing or eliminating Medicaid funds would have had a major impact on their ability to serve this population. The majority of commenters who supported the proposed rescission stated that the loss of funds would have been devastating to the school district and to the students served. The commenters also indicated that staff and services would have been cut due to loss of funding.

Many commenters cited the economy in supporting the proposed rescission. ''In light of the recent budget problems,'' one commenter stated, ''school districts need all the resources they can get.'' Another commenter stated that it is especially important during this time of dire budget constraints to maintain the ability of school staff to provide outreach and continue to be able to be reimbursed. In addition, the commenters believe that this reimbursement is a wise investment.

Response: Since issuing the School-Based Administration/Transportation final rule, we have become aware that limitations on Federal Medicaid funding would have adversely affected State outreach and enrollment efforts in schools, therefore limiting services for families in need. We previously assumed that, since such activities were within the scope of the overall mission of the schools, the activities would continue with funding from other sources available for educational activities.

We agree that rescission of the School-Based Administration/Transportation final rule is necessary to ensure that Medicaid administrative activities in schools, and certain transportation services, will continue to be provided in schools with Federal Medicaid funding. We will continue to apply the policies set forth in guidance issued prior to that rule, including the 1999 letter to State Medicaid Directors concerning school-based transportation services and the 2003 Medicaid School-Based Administrative Claiming Guide.

We will continue to evaluate the efficacy of these tools in addressing school-based claiming issues and collaborate with education and Medicaid stakeholder groups to discuss ways to improve such tools.

Comment: Some commenters applauded the proposed rescission of the School-Based Administration/Transportation final rule because it would allow their school district to continue to help identify students that are in need of proper medical attention, as a service to the community, and provide needed services to eligible students. Other commenters stated that Medicaid funding not only leads to an increase in the number of children receiving health insurance, but also increases the number of students who receive vital health services. One commenter stated that the final rule would have only served to reduce school efforts to bring health services to medically compromised children in schools across the nation.

Response: We agree that rescission of the School-Based Administration/Transportation final rule is necessary to ensure that Medicaid administrative activities in schools, and certain transportation services, will continue to be provided in schools with Federal Medicaid funding. We will continue to apply the policies set forth in guidance issued prior to that rule, including the 1999 letter to State Medicaid Directors concerning school-based transportation services and the 2003 Medicaid School-Based Administrative Claiming Guide.

We will continue to evaluate the efficacy of these tools in addressing school-based claiming issues and collaborate with education and Medicaid stakeholder groups to discuss ways to improve such tools.

Comment: Some commenters stated that the proposed rescission will make it easier for States to fulfill requirements under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit specified in section 1905(a) of Social Security Act (the Act). They believe that the School-Based Administration/Transportation final rule contradicted Medicaid's requirements for EPSDT and CMS' previous guidance. The commenter indicated that this mandate requires States to inform families about the availability of EPSDT services and assist them in accessing services. In addition, commenters stated that many school systems have contracted with States so that school nurses and staff may inform families about EPSDT. Since schools are mandated to provide certain services for students with special needs, one commenter stated, the funds that support these services must not be cut off.

Commenters cited the *State Medicaid Manual* as not only encouraging State Medicaid agencies to coordinate EPSDT administrative activities with ''school health programs of State and local health agencies,'' but also offering FFP to cover the costs to public agencies of providing direct support to the Medicaid agency in administering the EPSDT program.

Response: We agree that rescission of the School-Based Administration/Transportation final rule is necessary to ensure that Medicaid administrative activities, and certain transportation services, will continue to be provided in schools with Federal Medicaid funding. We will instead reinforce the policies that preceded the issuance of that final rule.

Comment: Some commenters stated that the School-Based Administration/Transportation final rule would have had a negative impact on Medicaid outreach activities in schools. One commenter stated, ''* * * the practical effect of the final rule would [have been] to eradicate the successful efforts made by schools to identify and enroll low-income children with disabilities into Medicaid.'' A substantial number of commenters stated that schools provide a unique opportunity to enroll children in Medicaid because the bulk of the eligible that are uninsured children attend schools. Other commenters stated that schools serve as a safe haven and gateway to health care for some of the State's most vulnerable residents, special education students, and children in families whose circumstances have limited their access to health care.''

Another commenter stated that reimbursing schools for Medicaid administrative activities and health related services is an efficient and effective way of ensuring that Federal funds are directed to those schools that need them the most. Other commenters recommended that CMS continue its support for school-based Medicaid

administrative activities because it can be an effective way to reach children in need of services and to ensure adequate medical care for disabled students and their families, who are often low-income and uninsured.

Some commenters referenced the May 2003 CMS Medicaid School-Based Administrative Claiming Guide, which states that ''* * * the school setting provides a unique opportunity to enroll * * * and to assist'' Medicaid eligible children ''access the benefits available to them'' as evidence that school-based Medicaid administrative claims should remain eligible for FFP.

Response: We appreciate the commenters' support of our proposal to rescind the School-Based Administration/Transportation final rule, and of the policies set out in the 2003 CMS Medicaid School-Based Administrative Claiming Guide. After careful consideration of the concerns raised by commenters, we agree that the final rule should be rescinded, and the policies set out in the Medicaid School-Based Administrative Claiming Guide, will be reinforced.

Comment: Some commenters stated that, in supporting the proposed rescission of the School-Based Administration/Transportation final rule, asking outside agencies to provide the services that schools currently provide would be more costly to the State. Other commenters stated that, even if employees of State or local Medicaid agencies were given this task, it would be far less efficient and effective than the current approach to outreach and enrollment activities, which is valuable specifically because staff and employees of schools are familiar to and trusted by families.

Response: We agree that rescission of the School-Based Administration/Transportation final rule is necessary to ensure that needed Medicaid administrative activities and related funding will continue in school settings. We will reinforce the policies that preceded the issuance of that final rule.

Comment: Some commenters supported the proposed rescission of the School-Based Administration/Transportation final rule because they believe their State's claiming practices have improved considerably since the early 2000's and that the rationale for developing the final rule was based on old data and old practices. As one commenter indicated, the main reason cited by CMS was the concern that school-based administrative expenditures are recognized and claimed properly, consistent with Federal law. One commenter indicated that there have been no published audit findings to gauge States' compliance with the 2003 guidelines issued by CMS. Medicaid administrative funding for all schools should not have been eliminated for all schools due to the problems of a few schools, they concluded. The commenter believes CMS should focus its efforts on working with States to ensure proper claiming. The commenter also stated that CMS knows that schools provide critical administrative services to children in Medicaid.

Response: We agree that rescission of the School-Based Administration/Transportation final rule is necessary to ensure that needed Medicaid administrative activities and related funding will continue. We intend to provide additional guidance and greater administrative oversight and technical assistance. We will also focus on program and fiscal integrity to provide guidance and direction to avoid duplication and improper claiming.

Comment: Some commenters focused on alternative approaches to meet the objectives of the School-Based Administration/Transportation final rule in ensuring valid Medicaid claiming procedures. In support of the proposed rescission, several commenters suggested measures that could achieve the objectives set out in the final rule, to include: issuance of one national standard for claiming developed in conjunction with public school officials; one national office to provide clear, consistent guidance; consistency of regulation implementation for administrative claiming among all regional CMS offices; annual national training of State officials overseeing school claiming to ensure compliance; individual States to determine how to process claims and audit; and a national committee to study the best methods to deliver information and services to families in need.

Other commenters applauded CMS' decision to explore alternatives and use existing tools to address inappropriate claiming to the extent that any questionable practices continue. Commenters stated that there was insufficient evidence to support the approach of the final rule and encourage CMS to investigate other, more appropriate methods of fulfilling its oversight role. These commenters believe that CMS can accomplish this objective without eliminating critically needed Federal funding of school-based Medicaid administrative and transportation services. The commenters stated that CMS has already increased its administrative oversight following reports of improper claiming.

Many commenters recommended that CMS further promote sound Medicaid program operation through clear guidance and technical assistance specifically addressing the unique settings and circumstances in which school-based services are delivered. Several commenters recommended that CMS should simplify claiming for school-based administrative and direct medical services provided in the school setting. The commenters also stated that methodologies that allow schools to access funds legitimately available for Medicaid program services and administrative activities will provide the most effective means of serving beneficiaries while ensuring proper and efficient program administration.

Response: In the proposed rescission, we specifically requested alternative approaches from the public that would allow us to achieve the objectives of the School-Based Administration/Transportation final rule without eliminating funding for allowable school-based expenditures. We agree that consideration of alternative approaches with stakeholder input and transparency is warranted. We further agree that we already have tools at our disposal to address inappropriate claiming that could arise in any setting, including schools. We will continue to evaluate the efficacy of these tools in addressing school-based claiming issues and collaborate with education and Medicaid stakeholder groups to discuss ways to improve such tools.

B. Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition

We proposed to rescind the November 7, 2008 Outpatient Hospital Services final rule in its entirety. While we previously had perceived the rule as having little impact (because it affected only the categorization of covered services), we became aware that this perception may have been based on inaccurate assumptions. In particular, we assumed that, to the extent that covered services were no longer within the outpatient hospital benefit category, those services could be easily shifted to other benefit categories. However, after publication of the final rule, we received input indicating that such shifts may be difficult in light of the complexity of State funding and payment methodologies and health care service State licensure and certification limits. As a result, we became concerned that the Outpatient Hospital Services final rule could have an adverse impact on the availability of covered services for beneficiaries.

Therefore, we proposed to rescind the November 7, 2008 Outpatient Hospital Services final rule in its entirety and reinstate the regulatory definition of ''outpatient hospital services'' at § 440.20 that existed before the final rule became effective. Specifically, we proposed to remove the provisions at § 440.20(a)(4)(i), which define Medicaid outpatient hospital services to include those services recognized under the Medicare outpatient prospective payment system (defined under § 419.2(b)) and those services paid by Medicare as an outpatient hospital service under an alternate payment methodology. We also proposed to remove the requirement at § 440.20(a)(4)(ii) that services be furnished by an outpatient hospital facility or a department of an outpatient hospital as described at § 413.65. Finally, we proposed to remove the provision at § 440.20(a)(4)(iii) that limits the definition of outpatient services to exclude services that are covered and reimbursed under the scope of another Medicaid service category under the Medicaid State plan.

In addition, we proposed to withdraw § 447.321 of the proposed rule published on September 28, 2007 (72 FR 55158) upon which we reserved action in the final rule. These provisions contained regulatory guidance on the calculation of the outpatient hospital and clinic services upper payment limit (UPL).

Overall, many commenters offered general support for the rescission of the Clarification of Outpatient Hospital Facility (Including Outpatient Hospital Clinic) Services Definition as part of comments that specifically addressed other aspects of Outpatient Hospital Services final rule.

Comment: One commenter explained that the Outpatient Hospital Services final rule could result in access and quality issues for Medicaid physical therapy services. The commenter reasoned that since outpatient hospital services are a mandatory Medicaid benefit and physical therapy services are optional, outpatient hospital settings offer ''a bridge to care for thousands of physical therapy patients under their State Medicaid program'' in States that offered a limited physical therapy benefit. The commenter stated that removing physical therapy services from the definition of outpatient hospital services would cause access and quality of care to suffer.

Response: We understand the commenters' concerns. However, we never intended to restrict access to physical therapy services and States have some flexibility in defining optional Medicaid benefits. The provisions of the Outpatient Hospital Services final rule should not have limited the access to and the quality of physical therapy services. This action rescinding the Outpatient Hospital Services final rule will eliminate this confusion.

Comment: Several commenters stated that the clarification of Medicaid outpatient hospital services failed to recognize services that may be unique to individuals served under Medicaid, in particular services covered in children's hospitals. These commenters stated that the Medicare outpatient hospital definition is too restrictive to meet the needs of those served under the Medicaid program.

Response: The Outpatient Hospital Services final rule did not restrict the services which States could provide in outpatient hospital facilities or to individuals covered under the Medicaid program. The rule merely clarified which of those services could be defined as and reimbursed under ''outpatient hospital services.'' States would have continued to be able to reimburse for other services provided in the outpatient hospital facility, if those services were authorized under the State's approved Medicaid State plan. This final rule should alleviate any potential concerns with coverage limitations by reinstating the regulatory definition of ''outpatient hospital services'' at § 440.20 that existed before the previous final rule became effective.

Comment: A number of commenters offered concerns that the Outpatient Hospital Services final rule placed limitations on payment for Medicaid services or restricted States' abilities to move services from costly inpatient settings to less costly outpatient settings.

Response: The Outpatient Hospital Services final rule did not place restrictions on States' abilities to reimburse Medicaid providers, set payment rates within applicable upper payment limits, or provide services in outpatient settings. Medicaid outpatient hospital services are limited to a reasonable estimate of what Medicare would pay for Medicaid equivalent services in accordance with § 447.321. This is an aggregate test for State government-owned or operated, non-State government-owned or operated and private facilities. The rescission does not impact the UPL requirements for outpatient hospital or clinic services that are currently in the regulations.

We are fully supportive of States' efforts to provide quality services in low-cost settings. This final rule to rescind the previous rule should eliminate any potential issues with shifting services from more costly to less costly hospital settings.

Comment: A few commenters supported the proposal to withdraw the outpatient hospital and clinic UPL requirements that were proposed in our Outpatient Hospital Services proposed rule (CMS reserved action on these provisions as part of Outpatient Hospital Services final rule). These commenters explained that the proposed UPL requirements were overly restrictive and excluded several Medicaid costs typically paid by States through the outpatient hospital benefit.

Response: CMS appreciates the support of these commenters. However, we note that we will continue to require States to demonstrate that Medicaid outpatient hospital and clinic service payments, in the aggregate for State government-owned or operated, non-State government-owned or operated and private facilities, do not exceed a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles. To do so, States will need to show that they are comparing the same scope of covered services.

Comment: Many rural health clinics commented that the Outpatient Hospital Services final rule would result in individuals seeking services through emergency departments ''at a higher cost to taxpayers.'' These providers also stated that excluding rehabilitative, school-based, and practitioner services from the outpatient hospital benefit would cut funding and services. Many of the rural health clinic providers were concerned that the final rule would eliminate the clinics' costs from a hospital's disproportionate share hospital (DSH) calculations. Several other commenters also raised concern that the clarification of the outpatient hospital services definition would reduce hospital DSH costs.

Response: The Outpatient Hospital Services final rule did not require any shifting of services to more costly settings or cut funding for Medicaid covered services. Rather, the Outpatient Hospital Services rule was limited to requiring States to distinctly define outpatient hospital facility services and other Medicaid benefits in the Medicaid State plan. This final rule should eliminate the concerns expressed by the clinics and other providers by reinstating the regulatory definition of ''outpatient hospital services'' at § 440.20 that existed before the final rule became effective.

Comment: One commenter stated concerns that the assumptions

acknowledged by CMS as inaccurate with respect to the Outpatient Hospital Services final rule were carried over into other Medicaid rulemaking. The commenter referenced the December 19, 2008 DSH reporting and auditing requirements final rule (73 FR 77904). The commenter did not specify which provisions of the rulemaking were carried over from the Outpatient Hospital Services final rule to the Medicaid DSH Auditing and Reporting final rule. However, the commenter requested that CMS clarify that States are not bound by any of the provisions or policies reflected in the subject outpatient hospital regulations when determining the uncompensated costs of services for DSH purposes.

Response: The Outpatient Hospital Services final rule addressed different policies than those discussed under the Medicaid DSH Auditing and Reporting final rule. The rescission of the Outpatient Hospital Services final rule has no impact on the provisions of the DSH Auditing and Reporting final rule. The DSH rule provides guidance to States on those outpatient hospital service costs that should be included in DSH calculations, which is independent from the outpatient hospital service clarification provided in the Outpatient Hospital Services final rule. For further discussion of the DSH Auditing and Reporting provisions, we refer readers to the December 19, 2008 final rule (73 FR 77904). Any concerns over the potential impact of the Outpatient Hospital Services final rule on DSH should be alleviated by restoring the regulatory definition of ''outpatient hospital services'' at § 440.20 that existed before the Outpatient Hospital Services final rule became effective.

Comment: One commenter supports the rescission of the Outpatient Hospital Services final rule because the clarification to the outpatient definition resulted in an administrative burden to States and offered no real policy purpose.

Response: The proposed rescission acknowledged that we initially believed the Outpatient Hospital Services final rule would result in little administrative burden on States based on information we received through the State plan review process. Based on additional information from stakeholders, these assumptions appear inaccurate. The rescission should alleviate the concerns of the commenter by restoring the regulatory definition of ''outpatient hospital services'' at § 440.20 that existed before the Outpatient Hospital Services final rule became effective.

C. Optional State Plan Case Management Services

We proposed to rescind certain provisions of the December 4, 2007 Case Management interim final rule. In discussions with States about the implementation of case management requirements, we became concerned that certain provisions of the Case Management interim final rule may unduly restrict beneficiary access to needed covered case management services, and limit State flexibility in determining efficient and effective delivery systems for case management services.

In particular, we were concerned that the Case Management interim final rule may be overly narrow in defining individuals transitioning to community settings. Specifically, the interim final rule contained parameters specifying short-term and long-term stays and included limits on days of targeted case management services associated with these different lengths of stay. In addition, we were concerned that States' service delivery systems would be affected by the limitations in the interim final rule on payment methodologies, and on the provision of case management services by other agencies or programs.

We were also concerned that the Case Management interim final rule may have unintentionally impacted Federal Medicaid requirements with respect to administrative claiming, as the regulation was not intended to redefine the types of activities that are allowable as Medicaid administrative case management.

Many of these same issues were raised by public commenters, and we share their concern that beneficiaries and the program as a whole may be adversely impacted if these provisions were implemented. We believe that these same concerns were also reflected in the Congressional moratorium on the implementation of this rule and the administrative requirements and limitations included in the interim final rule. Therefore, we proposed to rescind certain provisions of the Case Management interim final rule.

Specifically, we proposed to remove § 440.169(c) and § 441.18(a)(8)(viii), because we were concerned that these provisions may be overly restrictive in defining ''individuals transitioning to a community setting,'' for whom case management services may be covered under § 440.169(a). We thought that, until we address the comments submitted on the Case Management interim final rule, States should have additional flexibility to provide coverage using a reasonable definition of this term. We also proposed to remove § 441.18(a)(5), which would have required case management services to be provided on a one-on-one basis to eligible individuals by one case manager. We believed that this provision may unduly limit States' delivery systems for case management services. We further proposed to remove § 441.18(a)(8)(vi) because the requirement for payment methodologies in this provision may be administratively burdensome, may result in restrictions on available providers of case management services, and generally may limit beneficiary access to services. For similar reasons, in § 441.18, we proposed to rescind paragraphs (c)(1), (c)(4), and (c)(5) that limit the provision of case management activities that are an integral component of another covered Medicaid service, another non-medical program, or an administrative activity. On the issues addressed by these rescinded provisions, we proposed to continue to apply the interpretive policies in force prior to issuance of the Case Management interim final rule.

We proposed to rescind parts of § 441.18(c)(2) and (c)(3) to remove references to programs other than the foster care program, because we are concerned that these provisions may be overly restrictive in defining State options for the delivery of case management services. We proposed to consolidate the remaining provisions of these paragraphs as paragraph (c) (*see* 74 FR 21237, May 6, 2009).

We proposed to retain the remaining provisions of the Case Management interim final rule, and finalize those provisions in a future rulemaking.

Most commenters supported the rescissions included in the Case Management proposed rule. The following section summarizes general comments about the rule or issues not contained in specific provisions included in the proposed rule:

General Comments

Comment: Many commenters asked CMS to rescind all provisions of the Case Management interim final rule. Many commenters expressed concern that the provisions would significantly limit State flexibility in providing case management in the most effective and efficient manner possible. In addition, the commenters stated the provisions would pose additional barriers and would be more burdensome for providers of case management services. Several commenters stated the restrictions on case management included in the interim final rule would

inevitably shift the financial responsibility for case management to school districts across the nation.

Response: Under section 6052 of the DRA, the Secretary of the Department of Health and Human Services was authorized to promulgate an interim final regulation to define case management and targeted case management services.

We agree with commenters that certain provisions in the interim final rule may limit State flexibility in structuring case management services. Therefore, we proposed to rescind certain provisions of the Case Management interim final rule which are discussed in this document. However, we do not have the authority to rescind the interim final rule in its entirety, as section 6052 of the DRA amended the statute directly by defining case management services in section 1915(g) of the Act. We disagree with comments contending that the proposed or interim final rules regarding Medicaid case management services would shift the financial responsibility for case management to school districts. It is important to clarify that Medicaid reimbursement remains available for targeted case management services and other covered services, which are included in an eligible child's Individualized Education Program (IEP) or Individualized Family Service Plan, consistent with section 1903(c) of the Act.

Comment: Many commenters indicated the final regulation should not apply to Home and Community-Based Services (HCBS) waiver programs operated under section 1915(c) of the Act. Several commenters expressed concern that the Case Management interim final rule would impede State efforts to end the institutional bias in Medicaid. The commenters expressed that it is contrary to a number of programs already implemented by the Administration such as the Money Follows the Person grant program and Aging and Disability Resource Centers grants, which provided States with the tools necessary to serve frail older people in their homes and communities. The commenters stated that States would have to revamp their existing programs in order to adhere to the rules set forth in the rule. The commenters stated the rule undermines State level efforts to streamline and provide more efficient and cost-effective targeted case management systems and home and community-based services through the aging services network under Medicaid and works against the Supreme Court's decision in Olmstead and the Older Americans Act.

Response: We clarify that the rule does not apply to those activities that HCBS waiver programs must perform to meet the statutory assurances and other requirements of section 1915(c) of the Act. These functions include—(1) an eligibility determination; (2) an evaluation of need that includes both an initial evaluation and periodic re-evaluations; (3) a written plan of care; and (4) monitoring of the plan of care to assure the health and welfare of each individual served through the waiver program. However, in those instances in which States elect to offer targeted case management service as a State Plan service under section 1915(g) of the Act to persons enrolled in a 1915(c) waiver program, the provisions of the interim final rule would apply.

We disagree that clearly defining case management and targeted case management services impedes State efforts to end institutional bias in Medicaid. In addition, we disagree that the rule is contrary to the Money Follows the Person grant program or Aging and Disability Resource Center initiatives which CMS and the Administration on Aging have promoted and funded. These initiatives are based on partnerships between the Federal government, State governments, and private organizations to serve and provide access to long-term care services and supports for older people and people with disabilities. These initiatives are not solely, or even primarily, dependent upon a funding stream under the Medicaid case management benefit.

To the extent that the basis for the commenters' concerns is that the rule restricts Medicaid beneficiaries to case management furnished through particular providers, these concerns are inconsistent with the Medicaid freedom of choice requirements in section 1902(a)(23) of the Act (and the exceptions authorized to ensure qualified providers), which provide individuals with a choice of qualified, Medicaid providers.

Comment: Several commenters submitted comments on provisions of the Case Management interim final rule, which were not included in the Case Management proposed partial rescission rule.

Response: The comment period for the December 4, 2007 Case Management Services interim final rule closed on February 4, 2008. We appreciate the submitted comments; however, these comments are beyond the scope of the Case Management proposed partial rescission rule. CMS will respond to comments received on the interim final rule in a future rulemaking document.

Comment: We received several comments in support of our proposal to remove § 440.169(c) and § 441.18(a)(8)(viii), which defined case management services for the transitioning of individuals from medical institutions to the community as well as related State plan requirements. Commenters indicated the provisions would have limited services to individuals transitioning to community settings and applauded CMS for recognizing the provisions were overly restrictive in defining individuals transitioning to community settings. One commenter stated that these provisions would place stricter limits on the duration of case management services when an individual is transitioning from a hospital or other institution to the community. One commenter expressed concern that these provisions would have imposed unrealistic and impractical deadlines on the amount of time needed to assist in the safe and orderly transition of such individuals. One commenter stated these provisions were at odds with the *Olmstead* v. *L.C.* decision.

One commenter requested clarification about transitional Targeted Case Management (TCM) services provided to residents of an institution for mental disease (IMD).

A commenter stated that prohibiting Federal financial participation (FFP) until the date individuals leave the institution would place a significant cost burden on case management providers under Money Follows the Person grant and waiver programs.

Response: Public comments on the rescission of § 440.169(c) and § 441.18(a)(8)(viii) support our contention that the definition of targeted case management for the purpose of assisting individuals residing in medical institutions to community living was overly restrictive. We agree with commenters that some target groups receiving case management services in institutions may need a period of longer than 60 days of services in order to successfully transition to community living. We considered the many comments that indicated the period for facilitating transition is impacted by individuals' changing health status as well as behavioral challenges, which may delay or prevent transition into the community.

Our rescissions provide States with the flexibility to determine the duration of this service, up to 180 consecutive days, to respond to the complexity of the needs and the current capacities of the supports needed to successfully transition individuals to the

community. Guidance from the July 25, 2000 State Medicaid Directors Letter, Olmstead Update No. 3, will continue to provide the parameters under which States may receive reimbursement for case management services for the purpose of transitioning from medical institutions to the community. Specifically, TCM, as defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution in order to facilitate their transition to community services and enable them to gain access to needed medical, social, educational and other services in the community. TCM may be furnished during the last 180 consecutive days of a Medicaid eligible person's institutional stay for the purpose of community transition. States may specify a shorter time period or other conditions under which targeted case management may be provided. FFP is not available for any Medicaid service, including targeted case management services, provided to persons who are receiving services in an institution for mental disease (IMD), except for services provided to elderly individuals and children under the age of 21 who are receiving inpatient psychiatric services.

Comment: One commenter supported our proposal to remove § 441.18(a)(4), which required that the State's plan provide that case management services will not duplicate payments made to public agencies or private entities under the State plan and other program authorities, for the same purpose. (We note that this provision was included among the provisions to be rescinded in the Case Management proposed rule's regulation text under Part 441.18; however, the proposed rule's preamble did not discuss this provision.)

Response: We acknowledge that this provision was included in the proposed rule's regulation text in error. We are retaining § 441.18(a)(4). While we believe that States must have flexibility in establishing Medicaid programs that best meet their unique circumstances as well as those of Medicaid participants, we are also concerned that consistent guidance has not been available regarding the circumstances under which FFP would be available. The requirement that FFP would not be available for duplicate payments to public or private entities for the same purpose arose from the conference report of the Consolidated Omnibus Budget Reconciliation Act of 1985 which accompanied the original authorization of case management under section 1915(g) of the Act. Subsequently, this guidance was reiterated in the *State Medicaid Manual* (SMM) at section 4302.2(F).

Comment: One commenter stated that CMS needs to make it clear to State Medicaid agencies that this rule does not provide a basis for States requiring a Federally Qualified Health Center (FQHC) to use its section 330 grant funds to cover any portion of case management services provided by the health center to its patients. The commenter stated that such a requirement would be inconsistent with the long standing recognition on the part of the Congress and the Department of Health and Human Services (HHS) that Medicaid and Medicare are first payers for Medicaid and Medicare covered services provided to Medicaid and Medicare patients of a health center.

Response: Federally Qualified Health Centers (FQHCs) will continue to be reimbursed in accordance with section 1902(bb) of the Act, under which States reimburse FQHCs through either a prospective payment system or an alternative reimbursement methodology. The Case Management proposed rule would not have an impact on FQHC reimbursement methodologies or grants received under section 330 of the Public Health Service Act.

Comment: We received many comments in support of our proposal to remove § 441.18(a)(5), which would require case management services to be provided on a one-to-one basis to eligible individuals by one case manager. The commenters expressed concern that the provision would limit the States' flexibility by prohibiting a State from providing a child with more than one case manager even when the complexity of the child's condition demands the expertise of more than one program. The commenters recognized the importance of limiting the number of case managers that may be involved; however, some individuals have multiple and complex needs that intersect with several service delivery systems of care. One commenter suggested States should be required to provide assurances in their State plans that case management will not be duplicative and to indicate a methodology that ensures that duplication does not occur.

Response: We agree with the commenters and have removed § 441.18(a)(5). Even though case management and targeted case management services are comprehensive services, we believe that more than one case manager may be responsible and accountable for facilitating access to needed services. In rescinding this provision, we recognize that case managers may need to draw on other practitioners with special expertise, and may also tap the resources of a larger organization for support and overhead. In addition, if case managers were on leave or vacation, others could be assigned as substitutes to facilitate continuity of care and services. In addition, we recognize that case managers may need to rely on other practitioners to provide support for particular tasks. That is, reimbursement would be available for services other than case management, including direct services provided to the individual, that may contribute to the case management process, such as assessments furnished under the benefit for physicians' services or psychologists' services under the rehabilitative services benefit.

By removing the one case manager provision, we recognize the advantages of a team approach to case management services. For example, a lead case manager could coordinate resources and expertise from providers of medical, education, social, or other services for the benefit of the individual in developing a comprehensive plan of care and facilitating access to services. To facilitate this service model, States may set differential rates to reflect case or task complexity that would ensure sufficient payment to reflect the costs that case managers may incur in consulting with other practitioners. States should ensure that differential payment methodologies are reflected in the State's Medicaid plan.

Comment: We received a few comments in support of our proposal to remove § 441.18(a)(6), which prohibited providers of case management services from exercising the State Medicaid agency's authority to authorize or deny the provision of other services under the plan. (We note that this provision was included among the provisions to be rescinded as described in the Case Management proposed rule's preamble; however, this provision was not listed among those to be rescinded in the proposed rule's regulation text under § 441.18.) The commenters stated this provision is administratively burdensome and may limit beneficiary access to services. One commenter indicated it should be left to the States to delegate the agency's authority to authorize or deny certain services to a case manager who is most familiar with the individual's needs.

Response: We acknowledge that this provision was included, in error, in the Case Management proposed rule preamble. We disagree with comments that this provision is administratively burdensome and have retained this

provision to clarify that the State Medicaid agency authorizes or denies services. The provision would not require the State Medicaid agency to review each individual's care plan. Operating agencies or other entities such as counties may approve service plans as part of day-to-day operations. However, the Medicaid agency, at a minimum, must review at least a sample of care plans retrospectively or employ other methods to ensure that plans have been developed in accordance with applicable policies and procedures and that the plans ensure the health and welfare of participants. This oversight activity is a critical element of the Medicaid agency's responsibility. Furthermore, the function of prior authorization requires the judgment of the Medicaid agency and may not be delegated to anyone other than a Medicaid agency employee. Prior authorization is a legitimate function of the State Medicaid agency, which is performed as an appropriate component of the administration of the State plan.

Comment: We received many comments in support of our proposal to remove § 441.18(a)(8)(vi) concerning the payment methodology for case management services. This provision would have required a payment methodology under which case management providers would be paid at rates calculated using a unit of service that would not exceed 15 minutes. One commenter recommended that each State be allowed to design its own reimbursement methodology, rather than having one mandated. One commenter expressed concern that the 15 minute unit requirement would be seen as the minimum standard of providing the service. Many commenters stated this provision was administratively burdensome and may limit beneficiary access to services. One commenter stated the 15 minute unit requirement may have resulted in additional costs for the State due to increased staffing needs, increased payments for case management activities, fewer controls, the need to restructure eligibility and service authorization and significant changes to information technology systems. A few commenters recommended CMS continue to allow flexibility in reimbursement methodologies. The commenters indicated that per diem, daily, weekly or monthly rates should be allowed as well as fifteen minute units.

A few commenters expressed concern that the proposed rule did not address the prohibition on payment methodologies that bill under a ''bundled'' rate. The commenters stated the continuation of this prohibition could lead to fragmentation in State systems, multiple providers duplicating activities, and decreased access to home and community based services through a single point of entry system. One commenter expressed concern that the 15 minute unit would have required extensive cost analysis with accompanying time studies in order to validate rates.

Response: We agree with commenters that the payment methodologies included in the Case Management interim final rule may be administratively burdensome and overly restrict service models employed by States, and therefore we are rescinding this provision. We believe States should have the flexibility to develop payment methodologies other than 15 minute units. By removing this provision, we are permitting billing units of 15 or fewer minutes, as well as hourly, daily and weekly units; however, States must continue to demonstrate the economy and efficiency of all billing units and rates. This policy is based on section 1902(a)(30)(A) of the Act, which requires that States have methods and procedures to assure that payments are consistent with efficiency, economy, and quality of care.

Specifically, States will be required to demonstrate the development of each of the billing unit rates based on identified cost elements, including the salaries of the professionals providing the service, the percentage of time case managers spend on case management activities, substantiated overhead or indirect costs and the methodology used to allocate those costs to Medicaid. States may not always have access to commercial provider costs, and in such circumstances, States will be permitted to provide evidence that rates are market-based. Evidence may include the demonstration of commercial rates charged for case management-like services in the State or other demonstrations of rates for like services in the local health care market. CMS does not permit the use of fee-for-service rates paid to providers on a monthly basis. States seeking to use monthly rates are to meet the managed care requirements of 42 CFR part 438.

This rule does not address the issue of ''bundled'' payments. CMS will continue to work with States on an individual basis to establish an acceptable reimbursement methodology for TCM services.

Comment: We received a few comments specifically supporting our proposal to remove § 441.18(c)(1), which stated that case management does not include and FFP is not available for expenditures for services defined in § 440.169 when case management activities are an integral component of another covered Medicaid service.

Another commenter requested clarification that case management activities provided or arranged by a provider in a Primary Care Case Management (PCCM) program are allowable.

Response: We agree with the comments and have removed this provision. We will continue to apply existing interpretive policies regarding reimbursement for case management activities that are a component of another covered Medicaid service. Existing policies are summarized in the *State Medicaid Manual* at section 4302.A.1. and 4302.B. To include those activities as a separate benefit would result in duplicate coverage and payment. This activity would not be consistent with effective and efficient operation of the program.

To clarify, the rule does not apply to Primary Care Case Management (PCCM) services. PCCM services remain unchanged and are defined in § 440.168 of the Medicaid regulation.

Comment: We received several comments specifically supporting or disagreeing with our proposal to rescind parts of § 441.18(c)(2) and § 441.18(c)(3) and consolidate the remaining provisions of these paragraphs as paragraph (c). These provisions stated that case management does not include and FFP is not available for activities which constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible individual has been referred, as well as activities integral to the administration of foster care programs, such as those described in proposed § 441.18(c)(1) through (c)(8). The commenters supporting the rescission of the provisions stated that the provisions would force States to fragment services provided to children in foster care, a situation that is contrary to the purpose of the case management benefit. One commenter did not support the rescission of 441.18(c)(3). The commenter stated case management is done appropriately when it is kept separately from the provision of direct services.

Several commenters supported the creation of the new paragraph 441.18(c). In addition, one commenter suggested the rescission of the ''making placement arrangements'' provision, found in proposed § 441.18(c)(8), because including the provision in the list of activities for which reimbursement under Medicaid would not be available would be overly broad and restrictive.

Response: We agree with commenters that the provisions of § 441.18(c)(2) and § 441.18(c)(3) in the interim final rule may be overly restrictive. By removing these provisions and revising the text of paragraph (c) under § 441.18, we are clarifying that case management does not include, and FFP is not available in expenditures for services defined in § 440.169 when the case management activities constitute the direct delivery of underlying medical, education, social, or other services to which an eligible individual has been referred, including, for foster care programs, services such as, but not limited to, activities integral to the administration of the foster care program, such as those described in proposed § 441.18(c)(1) through (8).

We disagree with the commenter's characterization of the ''making placement arrangements'' provision of § 441.18(c)(8) as overly broad and restrictive, and are retaining this provision on the list of activities for which FFP is not available.

Comment: We received many comments in support of our proposal to remove § 441.18(c)(4), which stated that case management does not include, and FFP is not available in expenditures for services defined in § 440.169 when the activities for which an individual may be eligible, are integral to the administration of another non-medical program. Many commenters stated the provision would contradict the Medicaid statute and other laws impacting children with disabilities. Additionally, the commenters expressed concern that the ''integral component'' test would create a new parallel third party liability standard. The commenters also expressed concern that this provision would deny the rights guaranteed to children with disabilities in the Individuals with Disabilities Education Act and section 504 of the Rehabilitation Act of 1973. One commenter expressed concern that the provision would shift significant costs onto the child welfare and foster care systems to continue to provide TCM services.

One commenter questioned the availability of FFP for TCM services provided by State child welfare workers to children in the foster care program. Several commenters indicated that the provision in the interim final rule prohibiting child welfare agencies as case managers went beyond the language in the DRA.

Another commenter questioned the availability of Medicaid reimbursement for educational services under section 504 of the Rehabilitation Act of 1973, which requires school districts to provide appropriate educational services to students with disabilities.

Response: We agree with commenters that § 441.18(c)(4) may have resulted in compromising Medicaid beneficiaries' eligibility for medically necessary services under the State plan, including medically necessary case management (and targeted case management) services that are not used to administer other programs. Therefore, we are removing this provision from the final rule. In doing so, we clarify that FFP will be available under the Medicaid program for medically necessary services.

When activities constitute the administration of non-medical programs or are authorized or funded by such programs, reimbursement under Medicaid is not also available, because it supplants or duplicates the funding of these programs. The claiming, under Medicaid, of the administration for non-medical programs compromises the integrity of the Medicaid program and is not consistent with the overall direction of section 6052 of the DRA and current policy. Current policy as expressed in section 4302.2 of the State Medicaid Manual indicates that payment for case management services under section 1915(g) of the Act must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

In response to the comment questioning the availability of Medicaid reimbursement for educational services under section 504 of the Rehabilitation Act of 1973, we note that these educational services are designed to meet the individual needs of such students to the same extent as the needs of students without disabilities. That is, such educational services provide an equal opportunity for students with disabilities to participate in or benefit from education aids, benefits, or services. These educational services are not medical assistance, nor do they meet the definition of Medicaid administration; therefore, FFP would not be available under Medicaid.

We disagree with commenters that this provision would deny the rights guaranteed to children with disabilities under the Individuals with Disabilities Education Act (IDEA). While Medicaid reimbursement would not be available for the administration of non-medical programs including IDEA administrative functions, reimbursement would continue to be available for covered Medicaid services furnished to a Medicaid eligible child and included in the child's IEP. Specifically, section 1903(a) of the Act states that payment for Medical assistance would not be restricted for covered Medicaid services furnished to a child with a disability because such services are included in the child's IEP or Individual Family Service Plan (IFSP). States may choose to include Medicaid-covered services provided in schools, such as Medicaid case management or targeted case management services, in their State plans, which are provided by school-based providers qualified to provide the services.

In response to the comment regarding whether FFP would be available for TCM services provided by State child welfare workers to children in foster care, we clarify that the activities of child welfare programs are separate and apart from the Medicaid program. Medicaid case management services must not be used to fund the services of child welfare programs. Children with medical needs who also receive child welfare services qualify for Medicaid targeted case management services when relevant criteria are met. Specifically, such services must meet the definition of Medicaid case management services, and must be provided according to a Medicaid State plan which assures participant protections are in place, and that participants have a choice of qualified Medicaid providers. We note that section 1915(g)(1) of the Act allows an individual's choice of provider to be limited for targeted groups consisting of individuals with developmental disabilities or chronic mental illness.

Comment: We received one comment that specifically supported our decision to remove § 441.18(c)(5), which specified that activities that meet the definition of case management services in § 440.169 and under the approved State plan cannot be claimed as administrative activities under § 433.15(b).

Response: We agree with the comment and are removing § 441.18(c)(5) from the final rule. By removing this provision, we are clarifying that nothing in this regulation impacts Federal Medicaid requirements with respect to administrative claiming, nor does this regulation redefine the types of activities that are allowable as Medicaid administration.

We will continue to apply the interpretive policies and statutory provisions in force before the issuance of the interim final rule. Specifically, section 1903(a)(7) of the Act and the implementing regulation at § 430.1 and § 431.15 state that for the cost of any activities to be reimbursable under Medicaid as administration, they must be ''found necessary by the Secretary for the proper and efficient administration of the plan'' (referring to the Medicaid

State plan). Allowable administrative activities under Medicaid are sometimes referred to, by States and others, as ''administrative case management'' (*State Medicaid Manual* section 4302 A.2. and State Medicaid Director Letter, July 25, 2000, Olmstead Update Number 3). Some examples of allowable administrative activities include Medicaid eligibility determinations and re-determinations; Medicaid intake processing; Medicaid preadmission screening for inpatient care; prior authorization for Medicaid services; utilization review; Medicaid outreach; training; transportation; and referral activities. These examples are not meant to be all-inclusive, and we may make determinations regarding whether these or other activities are necessary for the proper and efficient administration of the State plan.

As reflected in prior guidance (State Medicaid Director Letter, December 20, 1994), a State may not claim costs as administration if the activities are an integral part or extension of a direct medical service. In addition, States may not claim as administrative activities the costs related to general public health initiatives, overhead costs, or operating costs of an agency whose purpose is other than the administration of the Medicaid program. Activities directed toward services not included under the Medicaid program, although these services may be valuable to Medicaid beneficiaries, are not necessary for the administration of the Medicaid program and therefore, are not allowable administrative costs. In addition, with regard to any allowable administrative claims, payment may only be made for the percentage of time spent that is actually attributable to Medicaid eligible individuals.

Payments for allowable Medicaid administrative activities must not duplicate payments that have been, or should have been, included as part of a direct medical service, capitation rate, or through another State or Federal program. It is the State's responsibility to ensure that there is no duplication of cost in a claim prior to submitting the claim to CMS.

The allocation methodology for costs claimed for the proper and efficient administration of the State plan must be specified in the State's approved public assistance cost allocation plan in accordance with subpart E of 45 CFR part 95 and ASMB C–10 (that is, the HHS Implementation Guide for A–87).

III. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rules for rescission. Two provisions of the final rule differ from the proposed rule:

We are retaining § 441.18(a)(6) under case management regulations. This provision was included among the provisions described in the proposed rule's preamble to be rescinded. However, this provision was not listed among those to be rescinded in the proposed rule's regulation text under § 441.18. Section 441.18(a)(6) would prohibit providers of case management services from exercising the State Medicaid agency's authority to authorize or deny the provision of other services under the State plan. Therefore, we are retaining this provision as it would clarify that the function of prior authorization requires the judgment of the Medicaid agency and may not be delegated to anyone other than a Medicaid agency employee. Prior authorization is a legitimate function of the State Medicaid agency, which is performed as an appropriate component of the administration of the State plan.

If the provision were rescinded, case managers would have the authority to authorize or deny services that could serve to restrict participant protections and rights that are afforded through the rules governing the fair hearings process under § 431.200. Participants should be free to accept or reject the advice of a provider of case management services. Furthermore, case management services are designed to assist eligible individuals to access needed services rather than limit this access.

We maintain that the reference to § 441.18(a)(6) in the preamble was a drafting error. We acknowledge that error and clarify that CMS intends to retain this provision. It states that although a Medicaid agency may place great weight on the informed recommendation of a case manager, it must not rely solely on case management recommendations in making decisions about the medical necessity of other Medicaid services that the individual may receive.

Retaining this provision clarifies that the State Medicaid agency authorizes or denies services. The provision would not require the State Medicaid agency to review each individual's care plan. Operating agencies or other entities such as counties, may approve service plans as part of day-to-day operations, and the Medicaid agency, at a minimum, must review at least a sample of care plans retrospectively or employ other methods to ensure that plans have been developed in accordance with applicable policies and procedures and the plans ensure the health and welfare of participants. This oversight activity is a critical element of the Medicaid agency's responsibility.

The second provision of the final rule that differs from the proposed rule concerns § 441.18(a)(4), which required that a State's plan provide that case management services will not duplicate payments made to public agencies or private entities under the State plan and other program authorities, for the same purpose. This provision was included among the provisions to be rescinded in the proposed rule's regulation text under § 441.18. (We note that the proposed rule preamble did not discuss this provision.)

CMS acknowledges that § 441.18(a)(4) was included in the proposed rule regulation text in error. We are retaining this section. While we believe that States must have flexibility in establishing Medicaid programs that best meet their unique circumstances as well as those of Medicaid participants, we are also concerned that consistent guidance has not been available regarding the circumstances under which FFP would be available. The requirement that FFP would not be available for duplicate payments to public or private entities for the same purpose arose from the conference report of the Consolidated Omnibus Budget Reconciliation Act of 1985, which accompanied the original authorization of case management under section 1915(g) of the Act. Subsequently, this guidance was reiterated in the *State Medicaid Manual* (SMM) at § 4302.2(F).

IV. Waiver of Delay in Effective Date

We ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the Administrative Procedures Act (APA), at 5 U.S.C. 553(d). We can waive the 30-day delay in effective date, however, if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive the delay in the effective date of this issuance because we find that, since the rescinded rules have been subject to Congressional moratoria and are not currently being implemented, it would be contrary to the public interest to implement them briefly and then change them back. Such sudden short-term changes would result in public confusion and administrative chaos. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impact of this final rule as required by Executive Order 12866, the Congressional Review Act, the Regulatory Flexibility Act (RFA), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism. Executive Order 12866 (as amended) directs agencies to assess all costs and benefits of all available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

One of the three rules we proposed to rescind was estimated to save the Federal government, by reducing its financial participation in the Medicaid program, amounts in excess of this threshold, with corresponding increases in costs to States (or in some cases to local entities or to other Federal programs) that would essentially offset these savings. That is, the primary economic effect predicted under this rule was to change the sources of ''transfer payments'' among government entities rather than the levels of actual services delivered. For example, the RIA for the School-Based Administration/Transportation final rule regarding Medicaid reimbursement for school administration and transportation of school-aged children assumed that localities would continue to provide such transportation even though one source of funding was reduced. Rescission of these rules would simply restore the *status quo ante*. That is, the Medicaid program would not gain these savings and other Federal, State, or local programs would not lose the Medicaid funding.

We acknowledge that many commenters were concerned that these three rules would have additional and substantial adverse effects on service provision and that the conclusions of the original RIAs did not reflect on this point. As explained earlier in this preamble, we share some of those concerns.) Except for portions of the Case Management interim final rule, these rules have not yet taken ''real world'' effect because of the Congressional moratoria on enforcement. Accordingly, we believe that the proposed rescissions would have no economic effect, assuming that the situation before July 1, 2009 is taken as the ''counterfactual'' case.

In the alternative, it might be argued that the appropriate counterfactual is that rescinding these rules would create ''economically significant'' benefits and costs of the same magnitude but exactly the opposite of those analyzed in the original RIAs. For example, the School-Based Administration/Transportation final rule regarding school administration expenditures and costs related to transportation was estimated to reduce Federal Medicaid outlays by $635 million in FY 2009 and by a total of $3.6 billion over the first 5 years (FY 2009 through 2013). The proposed rescission would eliminate these Federal savings with a corresponding offset in State, local, and Federal funding increases that would otherwise be needed to maintain existing services.

In the current economic climate, and with the drastic budgetary reductions being made in most States, the assumption of an essentially offsetting change in spending responsibilities that leaves service provision unchanged is completely unrealistic. However, because these rules were proposed for rescission without ever having been enforced, no purpose would be served in re-estimating hypothetically the effects of the original rules or in estimating hypothetically the potential effects of more realistically estimated current responses.

Accordingly, we have decided for purposes of this rulemaking that the most straightforward assumption to make is that we are preserving the *status quo*, and that under the criteria of EO 12866 and the Congressional Review Act this is not an economically significant (or ''major'') rule.

The RFA requires agencies to analyze options for regulatory relief of small entities if final rules have a ''significant economic impact on a substantial number of small entities.'' For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions, including school districts. ''Small'' governmental jurisdictions are defined as having a population of less than 50,000. Individuals and States are not included in the definition of a small entity. Although many school districts have populations below this threshold and are therefore considered small entities for purposes of the RFA, we originally determined that the impact on local school districts as a result of the final rule on School Administration Expenditures and Costs Related to Transportation of School-Age Children would not exceed the threshold of ''significant'' economic impact under the RFA, for a number of reasons. Most simply, the estimated annual Federal savings under this final rule were only about one eighth of one percent of total annual spending on elementary and secondary schools, far below the threshold of 3 to 5 percent of annual revenues or costs used by HHS in determining whether a proposed or final rule has a ''significant'' economic impact on small entities. Accordingly, regardless of the counterfactual, rescission of this rule would not have a ''significant'' impact on a substantial number of small entities. Our analyses of the final rules concluded that neither rule would have a significant impact on a substantial number of small entities. Accordingly, rescinding those final rules in whole or in part and preserving the *status quo ante* would likewise fail to trigger the ''significant'' impact threshold. We further note that in all three cases any impact of this rulemaking would be positive rather than negative on affected entities. Accordingly, the Secretary certifies that this final rule will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Of the three final rules we are rescinding in whole or in part, only the Outpatient Hospital Services rule would have had any possible effect on small rural hospitals. Our analysis of that rule concluded that it would have had no direct effect on these hospitals, and that any indirect effect as a result of State adjustments could not be predicted. Regardless, any effects of the proposed rescission on small rural hospitals would be positive, not negative. Accordingly, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule would not have a direct impact on

the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $133 million. This final rule contains no mandates that will impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $133 million. Our analyses of all three final rules concluded that they would impose no mandates of this magnitude, and the rescissions create no mandates of any kind.

Executive Order 13132 on Federalism establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements on State and local governments, preempts State law, or otherwise has Federalism implications. EO 13132 focuses on the roles and responsibilities of different levels of government, and requires Federal deference to State policy-making discretion when States make decisions about the uses of their own funds or otherwise make State-level decisions. The original final rules, however much they might have limited Federal funding, did not circumscribe States' authority to make policy decisions regarding school-based transportation and administration, case management, or hospital outpatient services. This final rule will likewise not have a substantial effect on State or local government policy discretion.

B. Anticipated Effects

As discussed above, one of the three final rules (School-Based Administration/Transportation final rule (72 FR 73635)) was predicted to have substantial effects on the availability of Federal Medicaid funds for the cost of activities that were arguably not the responsibility of Medicaid to fund. Consequently, the full rescission of the final rules relating to outpatient hospital and school administration and costs related to transportation of school-aged children between home and school will have little or no immediate fiscal impact due to the fact that the projected changes never took place. Likewise, the partial rescission of the Case Management interim final rule will have little or no immediate fiscal effect since certain projected changes never occurred.

C. Alternatives

We welcomed comments not only on the proposed rescission of each rule, in whole or in part, but also on alternatives that may more constructively address the underlying issues and their likely impacts on State beneficiaries of the Medicaid program. No comments were received concerning alternatives to rescinding the Outpatient Hospital Services rule in its entirety. Rescission of the entire rule was the only alternative suggested with respect to the partial rescission of the case management services interim final rule.

We received several suggestions for alternate approaches relating to the School-Based Administration/Transportation final rule related to transportation of school-aged children between home and school. Alternative suggested approaches included the issuance of one national standard for claiming developed in conjunction with public school officials and the creation of one national office to provide clear, consistent guidance. Other suggestions included annual national trainings of State officials overseeing school claiming to ensure compliance, the review of individual States to determine how to process claims and audit, and the development of a national committee to study best methods to deliver information and services to families in need. The suggestions also included CMS' further promotion of sound Medicaid program operation through clear guidance and technical assistance specifically addressing the unique settings and circumstances in which school-based administrative activities and services are provided. Stakeholders also suggested that CMS simplify claiming for school-based administrative and direct medical services provided in a school setting. We agree that these alternate approaches merit further consideration and will continue to explore with States how to best assure appropriate claiming related to the provision of Medicaid administrative, transportation, and medical services within the school setting.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Aged, Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart B—General Administrative Requirements

■ 2. Section 431.53 is revised to read as follows:

§ 431.53 Assurance of transportation.

A State plan must—

(a) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and

(b) Describe the methods that the agency will use to meet this requirement.

PART 433—STATE FISCAL ADMINISTRATION

■ 3. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.20 [Removed]

■ 4. Remove § 433.20.

PART 440—SERVICES: GENERAL PROVISIONS

■ 5. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 6. Section 440.20 is amended by revising the section heading and paragraph (a) to read as follows:

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) *Outpatient hospital services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

(1) Are furnished to outpatients;

(2) Are furnished by or under the direction of a physician or dentist; and

(3) Are furnished by an institution that—

(i) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; and

(ii) Meets the requirements for participation in Medicare as a hospital; and

(4) May be limited by a Medicaid agency in the following manner: A Medicaid agency may exclude from the definition of ''outpatient hospital services'' those types of items and services that are not generally furnished by most hospitals in the State.

* * * * *

§ 440.169 [Amended]

■ 7. Section 440.169 is amended by removing and reserving paragraph (c).

■ 8. Section 440.170(a)(1) is revised to read as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

(a) *Transportation.* (1) ''Transportation'' includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 9. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 10. Section 441.18 is amended by removing and reserving paragraphs (a)(5), and (a)(8)(vi); removing (a)(8)(viii); and revising paragraph (c) to read as follows:

§ 441.18 Case management services.

* * * * *

(c) Case management does not include, and FFP is not available in expenditures for, services defined in § 441.169 of this chapter when the case management activities constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible individual has been referred, including for foster care programs, services such as, but not limited to, the following:

(1) Research gathering and completion of documentation required by the foster care program.

(2) Assessing adoption placements.

(3) Recruiting or interviewing potential foster care parents.

(4) Serving legal papers.

(5) Home investigations.

(6) Providing transportation.

(7) Administering foster care subsidies.

(8) Making placement arrangements.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medical Assistance Program.)

Dated: June 5, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–15345 Filed 6–29–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2275–F2]

RIN 0938–AP74

Medicaid Program; Health Care-Related Taxes

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule finalizes our proposal to delay enforcement of certain clarifications regarding standards for determining hold harmless arrangements in the final rule entitled, ''Medicaid Program; Health Care-Related Taxes'' from the expiration of a Congressional moratorium on enforcement from July 1, 2009 to June 30, 2010.

DATES: *Effective Date:* These regulations are effective on July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Stuart Goldstein, (410) 786–0694.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1903(w) of the Social Security Act (the Act) provides for a reduction of Federal Medicaid funding based on State health care-related taxes unless those taxes are imposed on a permissible class of health care services; broad based, applying to all providers within a class; uniform, such that all providers within a class must be taxed at the same rate; and are not part of hold harmless arrangements in which collected taxes are returned, whether directly or indirectly. A similar hold harmless restriction applies to provider-related donations. Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve broad based (and uniform) waiver applications if the net impact of the health care-related tax is generally redistributive and the amount of the tax is not directly correlated to Medicaid payments. The broad based and uniformity requirements are waivable through a statistical test that measures the degree to which the Medicaid program incurs a greater tax burden than if these requirements were met. The permissible class of health care services and hold harmless requirements cannot be waived. The statute and Federal regulation identify 19 permissible classes of health care items or services that States can tax without triggering a penalty against Medicaid expenditures.

On February 22, 2008, we published a final rule entitled, ''Medicaid Program; Health Care-Related Taxes'' (73 FR 9685). This final rule amended provisions governing the determination of whether health care provider taxes or donations constitute ''hold harmless'' arrangements, codified statutory changes to the indirect guarantee threshold test and the definition of the class of managed care organization services, and deleted certain obsolete transition period regulatory provisions. The rule codified the reduction in the indirect guarantee threshold test in order to reduce the allowable amount that can be collected from a health care-related tax for the period of January 1, 2008, through September 30, 2011, as required by the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432). The rule also codified changes to the permissible class of health care items or services related to managed care organizations as enacted by the Deficit Reduction Act of 2005 (Pub. L. 109–171).

The February 22, 2008 final rule became effective on April 22, 2008. However, section 7001(a)(3)(C) of the Supplemental Appropriations Act of 2008, Pub. L. No. 110–252, imposed a partial moratorium until April 1, 2009, prohibiting CMS from taking any action to implement any provisions of the final rule that are more restrictive than the provisions in effect on February 21, 2008, with the exception of the change in the statutory definition of the class of services of a managed care organization and the statutorily-required change to the indirect guarantee threshold test. This moratorium was extended by

section 5003(a) of the American Recovery and Reinvestment Act of 2009 (the Recovery Act), Public Law 111–5, until July 1, 2009. Although not subject to the moratorium, a statutorily established transition period was established until October 1, 2009, for those States with previously enacted health care-related taxes under the previous definition of Medicaid managed care organization services.

On May 6, 2009, we published a proposed rule (74 FR 21230) that delayed the enforcement of the changes made in the February 22, 2008 final rule to the hold harmless tests under § 433.54(c) and § 433.68(f), other than the statutorily-required change to the indirect guarantee threshold level, until June 30, 2010. This portion of the regulation has been the subject of the Congressional moratoria and has not yet been implemented by CMS. We explained that the delay was necessary in order to determine whether additional clarification or guidance is necessary or helpful to our State partners. In addition, we explained that certain States were concerned that the regulatory language is broad or unclear. Furthermore, we indicated that the delay would allow more time to obtain information about the potential impact of the rule and alternative approaches, and to ensure appropriate implementation of the statutory restrictions on provider taxes and donations.

II. Provisions of the Proposed Rule and Response to Comments

In the May 6, 2009 proposed rule (74 FR 21230), we proposed to delay enforcement of certain provisions concerning hold harmless arrangements, for 1 year. We received a total of 11 timely comments from national hospital associations, State Medicaid Agencies, and the National Association of State Medicaid Directors. The comments supported our decision to delay enforcement of certain clarifications regarding standards for determining hold harmless arrangements in the final rule entitled, ''Medicaid Program; Health Care-Related Taxes'' from the expiration of a Congressional moratorium on enforcement on July 1, 2009 to June 30, 2010. We appreciate these comments and agree that the delay in enforcement of these specific provisions is merited. A summary of the public comments we received, and our responses to comments, are set forth below.

Comment: Several commenters expressed support for CMS in delaying enforcement of clarifications regarding standards for determining hold harmless arrangements. Commenters indicated that this delay would enable the Agency to further examine the impact of changes on States and providers. The commenters felt that any change to current policy should be carefully considered to ensure that it would not negatively affect the ability of State Medicaid programs to maintain coverage and payment levels. Some commenters believe that the provisions of the rule relating to the hold harmless provision overstepped the authority and guidelines provided by Congress. Commenters encouraged CMS to work with States to develop objective standards by which the hold harmless provisions for health care-related taxes can be measured.

Response: We appreciate the commenters' support for the delay in enforcement of the clarifications regarding standards for determining hold harmless arrangements. We will continue to work with States to ensure that Federal statutory requirements are met. We are committed not only to applying objective analysis in determining whether State tax programs contain hold harmless arrangements but also to working with each State on a case-by-case basis, given the unique nature of the programs, to ensure implementation of permissible tax programs.

As indicated by the commenters, the delay will provide us with time to determine whether further clarification or guidance is needed and would be of assistance to States. The delay will also allow more time to obtain information about the potential impacts of the rule and alternative approaches as well as to assure the appropriate implementation of the statutory restrictions.

Comment: Several commenters stated that the current provisions of the hold harmless test specified in the March 23, 2007 (72 FR 13726) proposed rule do not represent a reasonable interpretation of Federal statutory guidelines. Commenters believe that the hold harmless clarifications should be rescinded in their entirety and returned to the original regulatory language from the August 13, 1993 (58 FR 43156) final rule. These commenters stated that the 1993 regulatory language represented clearly understood and easily interpreted standards.

Response: Our responsibility is to ensure that the Federal statutory requirements governing health care-related taxes are met. Therefore, we believe it is necessary and appropriate for the Secretary to issue regulatory provisions to provide States with clear guidance on which health care-related tax programs are permissible and therefore eligible for Federal Financial Participation (FFP). We understand that certain States are concerned that the current regulatory language may be overly broad or unclear. During the delay in enforcement, we will work with States to learn more about the potential impact of the current regulatory language and to explore other alternatives in order to assure the appropriate implementation of the statutory restrictions.

Comment: One commenter resubmitted their original comments to the March 23, 2007 proposed rule.

Response: Comments on the March 23, 2007 proposed rule were previously considered and responded to in the February 22, 2008 final rule; therefore, we are not responding to them in this rule.

III. Provisions of the Final Regulations

In this final rule, we are adopting the provisions as set forth in the May 6, 2009 proposed rule (74 FR 21232) as final, with no changes.

IV. Waiver of Delay in Effective Date

We ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the Administrative Procedures Act (APA), at 5 U.S.C. 553(d). We can waive the 30-day delay in effective date, however, if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive the delay in the effective date of this issuance because we find that, since the hold harmless provisions of the rule for which enforcement will be delayed have been subject to Congressional moratoria and are not currently being implemented, it would be contrary to the public interest to implement them briefly and then change them back. Such sudden, short-term changes would result in public confusion and administrative chaos. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of all available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

The final rule on health care-related taxes was estimated to result in savings to the Federal government, by reducing its financial participation in the Medicaid program for amounts in excess of the tax-related threshold, with corresponding responses by States that would partially offset these savings. Specifically, the RIA for the final rule estimated that Federal Medicaid outlays would be reduced by $85 million in FY 2008, and $115 million per year in FY 2009 through FY 2011. These savings resulted directly from applying the language in the Tax Relief and Health Care Act of 2006 to reduce the maximum threshold on exclusion of health care-related taxes from 6 percent to 5.5 percent of net patient revenue. This final rule does not delay application of this reduced threshold, which is already in effect. This final rule delays the provisions governing the determination of whether health care provider taxes or donations constitute ''hold harmless'' arrangements. Accordingly, we believe that the delay would not have any substantial economic effect, and that this final rule is not ''economically significant'' under E.O. 12866 or ''major'' under the Congressional Review Act.

The RFA requires agencies to analyze options for regulatory relief of small entities if proposed or final rules have a ''significant economic impact on a substantial number of small entities.'' For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions, including school districts. ''Small'' governmental jurisdictions are defined as having a population of less than fifty thousand. Individuals and States are not included in the definition of a small entity. In the final rule on health care-related taxes, we analyzed potential impacts on small entities that might result from the change in the exclusion threshold. Some effects (such as reduced tax burden) were likely to be positive, and some (such as reductions in State reimbursement rates) could be either positive or negative. All of these effects would depend on future State decisions on taxation and reimbursement that could not be predicted and would in any event be indirect effects rather than the direct result of that rule. Regardless, this rule does not propose to delay the change in the exclusion threshold. As a result, the Secretary has determined that this final rule would not have a significant effect on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Our analysis of the final rule concluded that it would have had no significant direct effect on a substantial number of these hospitals. This final rule does not impose any new requirements. Accordingly, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this final rule would not have a direct impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold level is currently approximately $133 million. This final rule contains no mandates that will impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $133 million.

Executive Order 13132 on Federalism establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements on State and local governments, preempts State law, or otherwise has Federalism implications. EO 13132 focuses on the roles and responsibilities of different levels of government, and requires Federal deference to State policy-making discretion when States make decisions about the uses of their own funds or otherwise make State-level decisions. The original final rule, while limiting Federal funding, did not circumscribe the States' authority to make policy decisions regarding taxes and reimbursement. This final rule will likewise not have a substantial effect on State or local government policy discretion.

B. Anticipated Effects

As discussed in the February 22, 2008 final rule, States had a number of options open to them in addressing any reduction in Federal Financial Participation (FFP). They could restructure State spending and shift funds among programs, raise funds through increases in other forms of generally applicable tax revenue increases, or reduce reimbursement to the tax-paying health care providers. Presumably, most of those States have already made those decisions. The delay in this final rule will not affect the tax threshold; it will provide some relief to States in making other adjustments.

C. Alternatives Considered

In the May 6, 2009 proposed rule, we welcomed comments not only on the delay in enforcement, but also on alternatives that may more constructively address the underlying problems and their likely impacts on States and other stakeholders. Some commenters recommended that CMS rescind rather than delay the enforcement of the hold harmless provisions. There were no other specific alternatives offered by commenters. Commenters reiterated that we should work with States to develop objective standards by which compliance with the hold harmless provisions can be measured. CMS will take these comments into consideration throughout the enforcement delay period to assure the most appropriate implementation of the statutory provisions.

The only other option considered was to not finalize this delay in enforcement. However, as discussed in the preamble to this final rule and the response to comments, we believe that this is not the best alternative at this time.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 5, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–15347 Filed 6–29–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780–8013–02]

RIN 0648–XQ05

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area II Scallop Access Area to Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of Closed Area II Scallop Access Area (CA II) to scallop vessels until June 15, 2010. This closure is based on a determination by the Northeast Regional Administrator (RA) that scallop vessels will have caught the yellowtail flounder (yellowtail) total allowable catch (TAC) for the CA II by June 29, 2009. Effective 0001 hours, June 29, 2009, vessels may not fish for scallops in the CA II. Vessels on a CA II scallop trip at the time of this announcement must leave the CA II prior to 0001 hour, June 29, 2009. This action is being taken to prevent the scallop fleet from exceeding the yellowtail TAC allocated to the CA II for the 2009 scallop fishing year in accordance with the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the CA II to all scallop vessels is effective 0001 hr local time, June 29, 2009, until June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Commercial scallop vessels fishing in access areas are allocated 9.8 percent of the annual yellowtail TACs established in the (NE) Multispecies FMP. Given current fishing effort by scallop vessels in the CA II, the RA has made a determination that the CA II yellowtail TAC of 349,358 lb (148.47 mt) is projected to be caught on June 29, 2009. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** notice notifies scallop vessel owners that, effective 0001 hours on June 29, 2009, federally permitted scallop vessels are prohibited from declaring or initiating a trip into the CA II until June 15, 2010.

If a vessel with a limited access scallop permit has an unused trip(s) into CA II, it will be allocated 7.9 additional open areas days-at-sea (DAS) for each unused trip. If a vessel has been allocated a broken trip compensation trip that cannot be made, it will be allocated prorated open area DAS based on the remaining allocation and the above listed access area DAS conversion rate. For example, if a full-time vessel had an unused 9,000–lb CA II compensation trip (half of the full possession limit) at the time of a CA II yellowtail TAC closure, the vessel will be allocated 3.95 DAS (half of the 7.9 DAS that would be allocated for a full CA II trip). A separate letter will be sent to notify vessel owners of their allocations for unused trips in the CA II.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Due to the need to take immediate action to close the CA II once the yellowtail TAC has been taken, pursuant to 5 U.S.C. 553(b)(3) proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. The CA II opened for the 2009 fishing year on June 15, 2009 Data indicating the scallop fleet has taken, or is projected to take, all of the CA II yellowtail TAC have only recently become available. To allow scallop vessels to continue to take trips in the CA II during the period necessary to publish and receive comments on a proposed rule would result in vessels taking more yellowtail than allocated to the scallop fleet. Excessive yellowtail harvest from CA II would result in excessive fishing effort on the Georges Bank yellowtail stock, where tight effort controls are critical for the rebuilding program. Should excessive fishing effort occur, future management measures may need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rule making is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: June 25, 2009

Alan D. Risenhoover,

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

[FR Doc. E9–15432 Filed 6–25–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090421699–91029–02]

RIN 0648–XO74

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications Modification

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to adjust the harvest specifications for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2009, through December 31, 2009. This final rule increases the tonnage of Pacific sardine allocated for industry conducted research from 1200 metric tons (mt) to 2400 mt and decreases the second and third period directed harvest allocations by 750 mt and 450 mt, respectively.

DATES: Effective July 1 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: On February 20, 2009, NMFS published a final rule implementing the harvest guideline (HG) and annual specifications for the 2009 Pacific sardine fishing season off the U.S. West Coast (74 FR 7826) under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq (Magnuson-Stevens Act). These specifications and associated management measures were

based on recommendations adopted by the Pacific Fishery Management Council (Council) at their November 2008 public meeting in San Diego, California (73 FR 60680). For the 2009 Pacific sardine fishing season, the Council adopted, and NMFS approved, an acceptable biological catch (ABC) or maximum HG of 66,932 mt. This ABC/HG was determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP)(50 CFR part 660, subpart I). The Council also recommended, and NMFS approved, that 1,200 mt be initially subtracted from the ABC and reserved for an industry-conducted research project, which is planned but not yet approved. This 1,200 mt set-aside was intended to allow research fishing, which is planned for the second seasonal period (July 1 - September 15, 2009), to continue if that period's allocation is reached and directed fishing is closed. As stated in the final rule implementing the 2009 specifications, the use of the 1,200 mt would require NMFS to issue an Exempted Fishing Permit (EFP) because fishing would occur after the directed fishery is closed.

At the Council's March 2009 public meeting the Council reviewed two industry research/EFP proposals for conducting Pacific sardine biomass surveys and moved the two proposals forward for public comment with the recommendation that industry combine the proposals to create a single EFP application to be reviewed for final adoption at the June 2009 Council meeting. After hearing the research proposals and public comment, the Council then recommended, and NMFS issued a **Federal Register** notice proposing, that the original 1200 mt set-aside be increased to 2400 mt (74 FR 20897). To account for the additional 1,200 mt, the second and third period directed fishery allocations were proposed to be reduced by 750 mt and 450 mt respectively. This is approximately a proportional reduction in the two allocations. That proposed rule is being adopted as a final rule by this notice.

NMFS will publish a notice in the **Federal Register** requesting comments on the proposed EFP in the near future and a decision on whether to issue an EFP for the use of the research set-aside will be made near the start of the second seasonal period (July 1, 2009). If NMFS determines that an EFP cannot be issued, then the set-aside will be re-allocated to the third period's directed harvest allocation.

NMFS received two comments regarding this action. Both comments stated support for the action and expressed the belief that increasing the industry research set-aside, as this rule does, would result in better science from the proposed survey.

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in effective date for this final rule. This action reduces the available harvest amounts (quotas) for the second and third allocation periods. As explained in this rule, this action could not be taken sooner because although the Council developed their original recommendations for the 2009 Pacific sardine fishing season at their November public meeting, the recommendation to adjust those specifications, as set forth in this rule, was made to NMFS after their March meeting and was the result of new public testimony received at that meeting. Additionally due to the in-season nature of this action NMFS wanted to provide a robust comment period on the proposed action and this comment period ended on June 5, 2009. The beginning of the second allocation period is July 1, 2009, which is less than 30 days from the publication date of this final rule. The quota for the second allocation period will be taken quickly and likely before 30 days after the publication date of this final rule. If the second period quota is taken before this rule is effective then when the rule does become effective it would cause the second period's allocation quota to be exceeded. This overage in the second period would then be assessed against the third and final period's quota; which is already the smallest quota of the fishing season and a period of intense fishing. Maintaining these seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. Therefore NMFS finds it is necessary that this action is made effective before 30 days has elapsed to ensure the sardine fishery in the second period does not exceed the reduced quota available before this rule becomes effective. Providing an earlier effectiveness date facilitates both the effective management of the fishery as well as compliance by the fishermen. To assist the affected public in preparing for this rule, during the proposed rule comment period, NMFS mailed letters to all Pacific sardine permit holders. NMFS will also widely publicize this final rule through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Therefore, NMFS finds good cause to waive the 30–day delay in effectiveness in this circumstance.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: June 24, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

[FR Doc. E9–15464 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 124
Tuesday, June 30, 2009

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0023]

RIN 0579–AC96

Citrus Canker; Movement of Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. Under this proposed rule, we would eliminate the requirement that each lot of finished fruit be inspected at the packinghouse and found to be free of visible symptoms of citrus canker, and we would remove the current prohibition on the movement of fruit from a quarantined area to commercial citrus-producing States. We would continue to require fruit moved interstate from a quarantined area to be treated with an approved disinfectant and to be packed in a commercial packinghouse that operates under a compliance agreement. These proposed changes would relieve some restrictions on the interstate movement of fresh citrus fruit from quarantined areas while maintaining conditions that would prevent the artificial spread of citrus canker.

DATES: We will consider all comments that we receive on or before August 31, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0023* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0023.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas citri* subsp. *citri* (referred to below as Xcc) that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in ''Subpart—Citrus Canker'' (7 CFR 301.75–1 through 301.75–14, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing.

The conditions for the interstate movement of regulated fruit produced in a quarantined area in § 301.75–7(a) are currently as follows:

- Every lot of fruit to be moved interstate must be inspected by an Animal and Plant Health Inspection Service (APHIS) employee at a commercial packinghouse for symptoms of citrus canker. Any lot found to contain fruit with visible symptoms of citrus canker will be ineligible for interstate movement from the quarantined area. The number of fruit to be inspected will be the quantity that is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. A lot of fruit that is inspected and found to be ineligible for interstate movement may not be reconditioned and submitted for reinspection.
- The owner or operator of any commercial packinghouse that wishes to move citrus fruit interstate from the quarantined area must enter into a compliance agreement with APHIS in accordance with § 301.75–13.
- The regulated fruit was treated with an approved disinfectant in accordance with § 301.75–11(a).
- The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.
- Each lot of regulated fruit found to be eligible for interstate movement must be accompanied by a limited permit issued in accordance with § 301.75–12. Regulated fruit to be moved interstate must be packaged in boxes or other containers that are approved by APHIS and that are used exclusively for regulated fruit that is eligible for interstate movement. The boxes or other containers in which the fruit is packaged, and any shipping documents accompanying the boxes or other containers, must be clearly marked with a statement indicating that they may not be distributed in American Samoa, Arizona, California, Guam, Hawaii, Louisiana, Commonwealth of the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

(These are the commercial citrus-producing areas listed in § 301.75–5; we refer to them in this document as commercial citrus-producing States.)

In a final rule [1] effective and published in the **Federal Register** on November 19, 2007 (72 FR 65172–65204, Docket No. APHIS–2007–0022), we amended the regulations governing the interstate movement of regulated fruit from a quarantined area to establish these conditions. That final rule eliminated a requirement that the groves in which fruit to be moved interstate is produced be inspected and found free of citrus canker. Instead, we added the packinghouse inspection requirement mentioned earlier. We retained the other requirements that had been in the regulations, including the requirement that the fruit be treated with a surface disinfectant and the prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States listed in § 301.75–5.

We established those conditions based on the conclusions of a pest risk assessment (PRA) and risk management analysis (RMA) prepared for that rulemaking. The PRA concluded that asymptomatic, commercially produced citrus fruit, treated with a disinfectant and subject to other mitigations, is not epidemiologically significant as a pathway for the introduction and spread of citrus canker.

The RMA examined the risks associated with both symptomatic and asymptomatic fruit and concluded that the introduction and spread of Xcc into other States through the movement of commercially packed fresh citrus fruit from quarantined areas is unlikely. In addition, the RMA concluded that a phytosanitary inspection would ensure, with high confidence, that few shipped fruit would have symptoms of citrus canker disease. However, the RMA also concluded that the evidence available at that time was not sufficient to support a determination that fresh citrus fruit produced in an Xcc-infested grove cannot serve as a pathway for the introduction of Xcc into new areas, thus necessitating the prohibition on movement of fruit into commercial citrus-producing States.

In our responses to public comments in the Background section of the November 2007 final rule, we stated: ''If, in the future, evidence is developed to support a determination that commercially packed citrus fruit (both symptomatic and asymptomatic) is not an epidemiologically significant [2] pathway for the introduction and spread of citrus canker, we would undertake rulemaking to amend our regulations accordingly.''

New Evidence Regarding the Potential of the Movement of Fruit to Spread Citrus Canker

Since the publication of the final rule, two publications have provided additional evidence regarding the potential of fruit to serve as a pathway for the introduction and spread of citrus canker. This new evidence addresses key uncertainties and caused us to revisit our previous findings. The first article, by Gottwald *et al.* (2009),[3] documents research on the survival of Xcc on commercially produced and packed citrus fruit and the likelihood that such fruit could serve as a mechanism to spread the disease. The second article, by Shiotani *et al.* (2009),[4] documents research on the survival of Xcc on commercially produced mandarin fruits and the likelihood of spread of Xcc to trees from harvested mandarins.

Accordingly, we have prepared updates to the PRA and RMA that accompanied the November 2007 final rule. These documents, and the November 2007 PRA and RMA that they update, are available on the Regulations.gov Web site and in our reading room (see **ADDRESSES** above) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The updated PRA, titled ''An Updated Evaluation of Citrus Fruit (*Citrus* spp.) as a Pathway for the Introduction of Citrus Canker Disease (*Xanthomonas citri* subsp. *citri*)'' (March 2009), examines the information presented in Gottwald *et al.* (2009) and Shiotani *et al.* (2009) in the context of the earlier PRA. Based on the evidence presented in both the November 2007 PRA and the two new publications, the updated PRA concludes that asymptomatic fruit (treated or untreated) is not epidemiologically significant as a pathway for introducing citrus canker. It further concludes that symptomatic fruit subjected to a packinghouse process that includes washing with disinfectants is also not epidemiologically significant as a pathway for introducing citrus canker.

These conclusions led us to prepare a supplemental RMA, titled ''Movement of Commercially Packed Citrus Fruit from Citrus Canker Disease Quarantine Area; Supplemental Risk Management Analysis'' (May 2009). The supplemental RMA takes into account the conclusions of the updated PRA as well as the evidence and discussion presented in the November 2007 RMA. Like the November 2007 RMA, the supplemental RMA was submitted for peer review, in accordance with the Office of Management and Budget's bulletin on peer review. All the materials associated with the peer review on the supplemental RMA, including the peer reviewers' comments and our responses, are available at *http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml.* The peer reviewers' comments were considered in developing the supplemental RMA.

The supplemental RMA examines key findings from the publications mentioned earlier. These include:

- Post-harvest treatments reduce the viability of bacteria on fruit;
- The viability of bacteria on fruit diminishes after it is harvested;
- The low potential for spread from fruit to suitable hosts has now been reported by several sources;
- Rinds of infected fruit are unlikely to provide inoculum for disease if they have been discarded in the field at least 8 days; and
- Fruit parts, even those that are in direct contact with susceptible trees, are unlikely to spread the disease.

The supplemental RMA concludes that multiple lines of evidence, including, but not limited to, evidence from the two recent studies and the November 2007 RMA, indicate that commercially packed and disinfected fresh citrus fruit is not an epidemiologically significant pathway for the introduction and spread of Xcc, *i.e.:*

- Disease management practices in the grove reduce, but do not eliminate, Xcc populations.
- Commercially produced fruit harvested in areas where Xcc exists may be visibly infected or the fruit may carry

[1] To view the final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022.*

[2] The term ''epidemiologically significant'' refers to the minimum conditions required for introduction of a disease into an unaffected area. Our judgment of whether fruit is an epidemiologically significant pathway for disease transmission is based on the likelihood that the fruit itself will be infected with the disease, that the infection will occur in a way or at a level sufficient for transmission of the disease, and that such an infected fruit will encounter the biological conditions required for transmission of the disease.

[3] Gottwald, T., Graham, J., Bock, C., Bonn, G., Civerolo, E., Irey, M., Leite, R., López, M. M., McCollum, G., Parker, P., Ramallo, J., Riley, T., Schubert, T., Stein, B., and Taylor, E. (2009). The epidemiological significance of post-packinghouse survival of *Xanthomonas citri* subsp. *citri* for dissemination of Asiatic citrus canker via infected fruit. *Crop Protection* 28, 508–524.

[4] Shiotani, H., Uematsu, H., Tsukamoto, T., Shimizu, Y., Ueda, K., Mizuno, A. & Sato, S. (2009). Survival and dispersal of *Xanthomonas citri* pv. *citri* from infected Satsuma mandarin fruit. *Crop Protection* 28, 19–23.

the pathogen either on its surface or in wounds.

• Citrus canker disease development between harvest and packinghouse, via wounding for example, is not likely.

• Procedures for cleaning and disinfecting fruit are routinely applied by packinghouses.

• The individual efficacy of these procedures for removing or destroying Xcc may not be known in detail, but the effect of packinghouse treatments reduces the prevalence of viable Xcc and therefore the level of inoculum associated with commercially packed fresh citrus fruit.

• Packinghouse processing that includes a disinfectant treatment further reduces amounts of Xcc inoculum on infected or contaminated fruit.

• The viability of bacteria on fruit and in lesions and wounds diminishes after the fruit is harvested.

• The viability of Xcc bacteria that survive the packing process will further diminish during shipping.

• Epiphytic populations of Xcc may aid in pathogen dispersal, but substantial evidence indicates that bacterial populations do not infect intact mature fruit.

• Evidence indicates that wounds on harvested fruit containing Xcc inoculum do not lead to citrus canker lesion development, and Xcc populations generally decline rapidly, although wounds might occasionally retain Xcc populations that decline more slowly.

• The cool temperatures at which citrus fruit are stored and shipped and the duration of storage reduce the ability of Xcc to reproduce and cause infection.

• As a condition for successful establishment, Xcc, in amounts sufficient to cause infection, must encounter not only an environment with a conducive temperature, relative humidity, moisture, and wind events for infection, but also must encounter host plant tissue that is either at a susceptible growth stage or is wounded and then must successfully enter this tissue.

• Despite substantial international trade between Xcc-infected and noninfected countries, there is no authenticated record of movement of diseased fruit or seeds resulting in the introduction of Xcc to new areas.

Evaluation of Risk Management Options

In light of this evidence, the supplemental RMA considers five risk management options for the interstate movement of commercially packed citrus fruit from areas quarantined for citrus canker:

• *Option 1:* Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, without packinghouse treatment with a disinfectant.

• *Option 2:* Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, subject to packinghouse treatment with an APHIS-approved disinfectant, but without the current inspection requirement.

• *Option 3:* Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States except commercial citrus-producing States, subject to packinghouse treatment of citrus fruit with an APHIS-approved disinfectant treatment; and, allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, including commercial citrus-producing States, subject to packinghouse treatment with an APHIS-approved disinfectant treatment and APHIS inspection for symptoms of citrus canker.

• *Option 4:* Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States other than commercial citrus-producing States, subject to packinghouse treatment with an APHIS-approved disinfectant.

• *Option 5:* Leave the current regulations for the interstate movement of citrus fruit from areas quarantined for citrus canker unchanged.

Each option was considered within the context of available scientific evidence. Option 1 would allow unrestricted distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, without packinghouse treatment with a disinfectant. However, the updated PRA and the supplemental RMA limit their conclusion that fresh citrus fruit is not an epidemiologically significant pathway for the introduction and spread of Xcc to fruit that has been treated with a disinfectant. This conclusion is consistent with the Gottwald *et al.* (2009) article, which concludes that packinghouse-disinfested, citrus fruit with canker lesions are an unlikely pathway through which Xcc inoculum might lead to infection and Xcc establishment in new areas.

In addition, both of the recent articles examined in the updated PRA and the supplemental RMA included research on the issue of transmission of Xcc from infected fruit to nearby citrus plants. All but one of the situations reported in these articles found no transmission of Xcc to citrus plants in circumstances designed to allow for such transmission. Gottwald *et al.* (2009) reported one transmission of citrus canker from untreated, highly infected fruit to susceptible plants in what the paper characterized as ''a highly contrived situation designed to provide every possible opportunity for dispersal of Xcc.'' The situation included fruit selected specifically for their high level of canker infection, subjected to no post-harvest treatment or processing, placed next to grapefruit seedlings (considered highly susceptible to Xcc infection), and subjected to artificial wind and rain conditions. An injured grapefruit seedling immediately adjacent to the infested fruit was infected under these conditions. It is highly improbable that the conditions under which Xcc was transmitted from the untreated fruit would occur in any area; however, the experiment demonstrates that the transmission of canker from untreated fruit is possible. Therefore, we determined that movement of fruit from quarantined areas without disinfectant treatment and with no other phytosanitary mitigations was not justified by the available scientific evidence. We welcome public comment on this determination.

Option 5 is the most restrictive option that we considered. It would leave the current regulations in place and unchanged, including both the requirement for packinghouse inspection for symptoms of citrus canker and the prohibition on the movement of fruit to commercial citrus-producing States. This option would not take into account the evidence in the recent articles cited in the updated PRA and the supplemental RMA. This evidence establishes with a greater degree of certainty than was previously indicated that commercially packed fruit that is treated with an APHIS-approved disinfectant is not an epidemiologically significant pathway for the transmission of citrus canker, meaning that some phytosanitary mitigations currently included in the regulations are no longer necessary to prevent the spread of citrus canker from quarantined areas via the movement of fruit. Consequently, Options 2, 3, and 4 were evaluated and Options 1 and 5 were no longer considered.

Option 2 would allow commercially packed fruit treated with an APHIS-approved disinfectant to move from a quarantined area to any State, including commercial citrus-producing States, but would not include the current inspection requirement.

Options 3 and 4 require disinfectant treatment and include additional phytosanitary measures to address any remaining uncertainty regarding the epidemiological significance of commercially packed fruit as a pathway for the transmission of citrus canker.

Option 3 would prohibit the distribution of fruit to commercial citrus-producing States unless it is inspected for symptoms of citrus canker, using the same inspection process currently described in paragraph (a)(1) of § 301.75–7. Option 4 would not include the inspection requirement but would continue to prohibit the distribution of all fruit to commercial citrus-producing States.

After considering the evidence presented in the updated PRA and the supplemental RMA and the conclusions of those documents, we have determined that currently available scientific evidence provides additional certainty that commercially packed, treated fruit is not an epidemiologically significant pathway for the spread of citrus canker. Therefore, no mitigations beyond treatment with an APHIS-approved disinfectant are necessary. Accordingly, in this document, we are proposing to implement Option 2.

Pretreatment Detergent Wash

We also considered whether to change our current fruit disinfection treatments in § 301.75–11 in light of findings in Gottwald *et al.* (2009). Paragraph (a) of § 301.75–11 currently requires fruit moved interstate from a quarantined area to be treated, in a commercial packinghouse operating under a compliance agreement, in at least one of the following ways:

- The regulated fruit must be thoroughly wetted for at least 2 minutes with a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5.
- The regulated fruit must be thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.
- The regulated fruit must be thoroughly wetted for at least 1 minute with a solution containing 85 parts per million peroxyacetic acid.

Gottwald *et al.* (2009) presents evidence that ''suggest[s] that effectiveness of packing line decontamination can be increased by using prewashing treatment that includes detergent, (such as SOPP) to remove dirt and debris that reduce the effectiveness of the disinfestants.'' (Shiotani *et al.* (2009) did not address this issue.) The supplemental RMA concludes, as noted earlier, that packinghouse processing that includes prewashing fruit with detergent over brushes followed by a disinfectant treatment further reduces already epidemiologically insignificant amounts of Xcc inoculum on infected or contaminated fruit. Accordingly, we considered whether to change our treatment requirements to incorporate a pretreatment detergent wash requirement in addition to the approved disinfectant treatments listed earlier.

Various studies have demonstrated the effectiveness of the currently approved disinfectants in reducing numbers of Xcc cells or similar bacteria to low or undetectable levels, as discussed in the November 2007 RMA. The overall results of the pretreatment detergent wash experiments in Gottwald *et al.* (2009) were inconclusive. In the experiment in which the pretreatment detergent wash increased the effectiveness of the chlorine treatment, the treatment used was not equivalent to any of the APHIS-approved treatments listed earlier. In the other experiment, the treatment was equivalent, but the pretreatment detergent wash did not significantly increase the effectiveness of the treatment.

In addition, the updated PRA and supplemental RMA conclude that the viability of Xcc bacteria on fruit and in lesions and wounds diminishes after the fruit is harvested; the viability of Xcc bacteria that survive the packing process will further diminish during shipping; and evidence indicates that wounds on harvested fruit containing Xcc inoculum do not lead to citrus canker lesion development, and Xcc populations generally decline rapidly, although wounds might occasionally retain Xcc populations that decline more slowly. The risk associated with bacteria that survive treatment is additionally mitigated by other steps in the commercial packing and distribution process.

Taking all the relevant evidence into account, we have determined that it is not necessary to amend the regulations to require a pretreatment detergent wash in addition to the disinfectant treatment. The current disinfectant treatments are an adequate mitigation to ensure that fruit is not an epidemiologically significant pathway for Xcc, especially when considering other aspects of the epidemiological significance of Xcc that are better characterized by the new evidence.

Proposed Changes to the Regulations Governing the Interstate Movement of Fruit

As noted earlier, the regulations governing the interstate movement of regulated fruit produced in a quarantined area are set out in paragraph (a) of § 301.75–7. Reflecting our choice of Option 2, we are proposing to remove the requirements in paragraphs (a)(1) and (a)(6), which respectively describe the current fruit inspection process and state that a lot of fruit that is determined to be ineligible for interstate movement through the inspection process may not be reconditioned and submitted for reinspection.

We are also proposing to remove the requirements in paragraph (a)(5), which requires a limited permit and marking of the fruit's packaging to prevent its movement to commercial citrus-producing States. The current introductory text of paragraph (a) in § 301.75–7 refers to movement of fruit into any area of the United States except commercial citrus-producing areas. We would amend this introductory text to indicate that regulated fruit may move interstate with a certificate issued and attached in accordance with § 301.75–12. Because we would remove the current distribution restrictions, a certificate, which allows unrestricted movement, would be the appropriate document to accompany regulated fruit moved interstate from the quarantined area under the proposed regulations.

Paragraph (a)(2) requires the owner or operator of any commercial packinghouse that wishes to move citrus fruit interstate from the quarantined area to enter into a compliance agreement with APHIS in accordance with § 301.75–13. We are proposing to move this requirement to paragraph (a)(1) and to restate it slightly to emphasize that the fruit must be packed in a commercial packinghouse. The emphasis on packing in a commercial packinghouse would ensure that the regulations are consistent with the conclusions of the updated PRA and the supplemental RMA, which evaluate the risk of spread of citrus canker via commercially packed fruit specifically. Under this proposal, paragraph (a)(1) of § 301.75–7 would state that regulated fruit must be packed in a commercial packinghouse whose owner or operator has entered into a compliance agreement with APHIS in accordance with § 301.75–13.

The term ''commercial packinghouse'' is defined in § 301.75–1 as an establishment in which space and equipment are maintained for the primary purpose of packing citrus fruit for commercial sale. The conclusions of the supplemental RMA refer specifically to disinfected fruit; accordingly, we are proposing to amend this definition to refer to equipment maintained for the

primary purpose of disinfecting and packing fruit.

In addition, under the current definition of *commercial packinghouse,* a commercial packinghouse must be registered as a packinghouse with the State in which it operates or hold a business license for treating and packing fruit. However, part of this definition is in error; there is no business license available for treating and packing fruit in the citrus canker quarantined area. Rather, there are State licensing, registration, and certification provisions for commercial packinghouses, and each of these provisions includes requirements that the packinghouse must fulfill in order to be licensed, certified, or registered as a commercial packinghouse. Therefore, we are proposing to amend the *commercial packinghouse* definition to require that a commercial packinghouse be licensed, registered, or certified with the State in which it operates and meet all the requirements for the license, registration, or certification that it holds.

Proposed paragraph (a)(2) of § 301.75–7 would require the regulated fruit to be treated in accordance with § 301.75–11(a). This requirement is currently contained in paragraph (a)(3).

Proposed paragraph (a)(3) would require the regulated fruit to be free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit. This requirement is currently contained in paragraph (a)(4). We are proposing to retain this requirement, which is necessary because other plant parts pose different risks than fruit does; canker lesions on leaves, for example, typically have much higher bacterial populations than canker lesions on fruit.

Under this proposed rule, APHIS inspectors would no longer be on site at packinghouses to enforce the requirements for treatment and removal of leaves, twigs, and other plant parts. We would require that these activities be conducted in accordance with the regulations in our compliance agreements with commercial packinghouses, and spot checks would be conducted to ensure that treatment is being performed properly and that no leaves, twigs, or other plant parts are being included in containers of fruit moved interstate.

As noted earlier, we are proposing to remove the requirements related to packaging fruit moved interstate, under which only fruit that met the requirements of the regulations could be packaged in boxes or other containers bearing a statement prohibiting their distribution to commercial citrus-producing States, because we are proposing to remove the distribution restrictions that made those packaging requirements necessary. It is a common business practice in Florida for businesses to buy commercially packed and treated fruit and repackage it for interstate movement before the fruit is ultimately moved interstate from Florida. Under this proposed rule, the repackaged fruit would not be moved with its original certificate, which would have been attached to the container in which the fruit was originally packed or to the waybill originally accompanying the fruit in accordance with § 301.75–12. However, fruit moved interstate would need to be moved with a certificate to allow us to verify that it was moved in accordance with the proposed regulations.

To address this issue, we are proposing to include a new paragraph (a)(4). This paragraph would state that, if fruit is repackaged after being packed in a commercial packinghouse and before it is moved interstate from the quarantined area, the person that repackages the fruit must enter into a compliance agreement with APHIS in accordance with § 301.75–13 and issue and attach a certificate for the interstate movement of the fruit in accordance with § 301.75–12.

In current § 301.75–7, paragraph (c) contains requirements for the interstate movement of fruit from a quarantined area when that fruit was not produced in the quarantined area but was moved there for packing. Under paragraph (c)(1), such fruit may be moved to States other than commercial citrus-producing States, under conditions similar to those in current paragraph (a), or the fruit may be moved to any State (including commercial citrus-producing States) under the conditions specified in under paragraph (c)(2). These conditions include covering the fruit while it is in transit, keeping it separate from fruit that is produced in the quarantined area and packed in the packinghouse, and otherwise preventing its exposure to citrus canker. The fruit must also be treated in accordance with § 301.75–11(a).

We evaluated these conditions in light of the updated PRA and the supplemental RMA and the changes we are proposing. The supplemental RMA indicates that it is not necessary to separate fruit produced in a quarantined area from fruit not produced in a quarantined area, as substantial evidence indicates that bacterial populations of Xcc on harvested fruit do not infect intact mature fruit. Although paragraph (c)(2) does not require fruit moved to a quarantined area for packing and intended to be moved to commercial citrus-producing States to be packed in a commercial packinghouse, as would be required under proposed paragraph (a)(1) of § 301.75–7, the provisions for separation of fruit, disinfection of equipment, and disposal of litter in paragraph (c)(2) effectively limit its applicability to fruit packed in commercial packinghouses. Paragraph (c)(2) currently contains a requirement for treating fruit moved interstate, as would be required under proposed paragraph (a)(2). In addition, removing leaves, twigs, and other plant material from packed fruit, as would be required in proposed paragraph (a)(3), is a typical packing practice in commercial packinghouses.

Given these considerations, we believe that it is no longer necessary to provide separate conditions for the interstate movement of fruit produced in a quarantined area and fruit that is not produced in a quarantined area but is moved into a quarantined area for packing. Therefore, this proposal would remove paragraph (c) and amend the introductory text of paragraph (a) to indicate that paragraph (a) provides conditions for the interstate movement of all regulated fruit from citrus canker quarantined areas.

Paragraph (b) in § 301.75–7 states that regulated fruit produced in a quarantined area that is not eligible for movement under paragraph (a) may be moved interstate only for immediate export. We are proposing to amend this paragraph to indicate that any regulated fruit in a quarantined area, whether produced in the area or moved to the area for packing, that is not eligible for interstate movement could only be moved for immediate export.

Section 301.75–4 of the regulations sets out the quarantined areas for citrus canker. Within § 301.75–4, paragraph (d) sets out conditions for designating an area less than an entire State as a quarantined area. Some of these conditions concern the movement of fruit. We are proposing to retain most of the conditions for the intrastate movement of fruit in paragraphs (d)(2)(i) and (ii), as they contain requirements intended to prevent intrastate transmission of citrus canker via plant parts other than fruit and via equipment. The first sentence of paragraph (d)(2)(ii)(D), though, requires regulated fruit moved intrastate for packing to be stored separately from and have no contact with fruit eligible for movement to commercial citrus-producing States. As discussed earlier, this provision is no longer necessary, and we are therefore proposing to remove it.

We are also proposing to remove paragraph (d)(6), which requires that, in addition to meeting the conditions in § 301.75–7(a), fruit moved interstate from a quarantined area less than an entire State originate from a grove in which no plant parts infected with citrus canker were found in the 2 years before interstate movement and in which any exposed plants in the grove at high risk for developing citrus canker have been destroyed. This provision is intended to reduce the prevalence of citrus canker in fruit to be moved interstate. Because we have determined that fruit that meets the requirements of proposed § 301.75–7(a) is not an epidemiologically significant pathway for the transmission of citrus canker, this additional requirement is not necessary. Accordingly, we are proposing to remove paragraph (d)(6).

Under § 412(a) of the Plant Protection Act (7 U.S.C. 7712), the Secretary of Agriculture may prohibit or restrict the interstate movement of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination within the United States of a plant pest or noxious weed. Based on our supplemental RMA, APHIS has concluded that commercially packed citrus fruit treated with an APHIS-approved disinfectant is not an epidemiologically significant pathway for the dissemination of citrus canker within the United States. Accordingly, APHIS has determined that it is not necessary to prohibit the interstate movement of fruit from citrus canker quarantined areas that is commercially packed and treated with an APHIS-approved disinfectant in order to prevent the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the updated PRA and the supplemental RMA referred to earlier in this document and our judgment that the application of the measures that would be required under proposed § 301.75–7(a) would prevent the dissemination of plant pests within the United States.

Although this proposed rule would amend only the domestic citrus canker quarantine regulations, we would in the future consider the risk management strategy proposed here to be suitable to mitigate against citrus canker in fruit imported from foreign countries affected with citrus canker. However, the national plant protection organization of such a country would need to submit a request that we do so. A country requesting to be able to use this framework to export citrus to us would have to demonstrate the ability to perform the required treatments; it would also be required to have a bilateral workplan in place with APHIS. In addition, there may be other citrus pests in foreign citrus production areas whose risk would need to be mitigated separately from the risk posed by citrus canker; a request to export citrus from a canker-affected country would need to incorporate the risk management strategy for citrus canker that we propose here into a risk management approach that addresses the total citrus pest complex present in that country. For that reason, we would complete a separate pest risk analysis for such an action.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an initial regulatory flexibility analysis that examines the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

We are proposing to amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. Under this proposed rule, we would eliminate the requirement that each lot of finished fruit be inspected at the packinghouse and found to be free of visible symptoms of citrus canker, and we would remove the current prohibition on the movement of fruit from a quarantined area to commercial citrus-producing States. We would continue to require fruit moved interstate from a quarantined area to be treated with an approved disinfectant and to be packed in a commercial packinghouse that operates under a compliance agreement. These proposed changes would relieve some restrictions on the interstate movement of fresh citrus fruit from quarantined areas while maintaining conditions that would prevent the artificial spread of citrus canker.

In the November 2007 final rule, we amended the regulations governing the interstate movement of regulated fruit from a quarantined area. That final rule removed the grove inspection requirement whereby fresh citrus fruit to be moved interstate was to be inspected by APHIS and found to be free of citrus canker. Instead, we added a requirement for packinghouse inspection of fresh citrus for symptoms of citrus canker. We retained the other requirements that had been in the regulations, including the requirement that the fruit be treated with a surface disinfectant and the prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States listed in § 301.75–5. All components associated with the changes in regulations were based on scientific findings as outlined in the PRA and RMA prepared for that rulemaking.

New scientific evidence has led APHIS to prepare an updated PRA and a supplemental RMA. These documents indicate that less stringent regulations would offer the same level of protection against the spread of citrus canker while lessening some of the economic burden associated with compliance under the current regulations. By removing the requirement that fruit to be moved interstate be inspected and found to be free of citrus canker symptoms, the proposed rule would allow for the long-term preservation of fresh citrus movement to the domestic market by Florida's commercial packinghouses and growers. (We use the term ''domestic market'' to mean all States except Florida.)

Under the current regulations, approximately 4.7 percent of the lots of fresh grapefruit, 1.2 percent of the lots of fresh oranges and temples, and 0.2 percent of the lots of fresh tangerines and tangelos intended for the domestic market were rejected during the 2008–09 season due to the presence of citrus canker, as found during APHIS inspection at the packinghouses. If APHIS inspectors find citrus canker on one piece of citrus fruit during their inspection, the entire lot is prohibited from interstate movement. Furthermore, it is also highly likely that some producers, after assessing whether the prevalence of citrus canker in their groves is low enough for their fruit to pass inspection after packinghouse grading and culling, may consider alternative markets for their citrus rather than risk costly packing charges associated with the rejected lots.

While the rejected lots of the 2008–09 season were successfully diverted for processing or to fresh fruit markets within Florida or outside the United

States, affected citrus producers and commercial packinghouses do incur revenue losses due to the product diversion. The cost of producing citrus fruit intended for the fresh market is greater than the cost of production for the processed market, where the physical appearance of the fruit is not important; the value of citrus on the processed market is relatively low compared to the value of citrus sold on the fresh market.

As citrus canker continues to spread throughout Florida, the proportion of fruit diverted to other markets because of rejected lots will increase. Citrus growers will only maintain self-surveys and best management field practices for citrus canker that are necessary to produce fruit for the domestic fresh citrus market as long as the expected net return from the fresh fruit sales is greater than the expected net return from sales for processing or from sales of fresh fruit within Florida or in foreign markets. The greater the likelihood that a lot may be rejected because of fruit found to have citrus canker symptoms, thereby resulting in elimination charges and price discounts, the less likely producers will choose to bear the higher costs of self-surveys and best management practices.

In an interim rule effective and published on August 1, 2006 (71 FR 43345–43352, Docket No. APHIS–2006–0114), we amended the regulations to designate the entire State of Florida as a quarantined area for citrus canker. This action resulted in restrictions on the movement of all citrus fruit from the State of Florida, including a prohibition on distributing such fruit to commercial citrus-producing States. This proposed rule would also allow for the renewal of fresh citrus market access to other commercial citrus-producing States. Prior to implementation of the August 2006 interim rule, Florida shipped an average of 106,000 4/5-bushel cartons of fresh grapefruit, 209,000 4/5-bushel cartons of fresh oranges and temples, and 1 million 4/5-bushel cartons of fresh tangerines and tangelos to other commercial citrus-producing States.[5] Approximately 5.7 percent of Florida domestic fresh fruit shipments (nearly 4 percent of all shipments, including exports) were transported to other commercial citrus-producing States during the 2004–05 season, the final season in which Florida fresh citrus was permitted movement into these States. California received about 3 percent of Florida's domestic fresh citrus shipments during the 2004–05 season. While fresh citrus shipments to other commercial citrus-producing States generally accounted for less than 6 percent of Florida's domestic market supply, that State's producers and citrus packers of fresh tangerines and tangelos found lucrative markets for their products in California, Texas, and Louisiana, shipping between 12 and 15 percent of total domestic fresh shipments to these States.

U.S. consumers other than those in Florida would benefit from an increased supply of fresh citrus because of this rule, especially fresh grapefruit. Florida is the largest supplier of fresh grapefruit, with an average domestic fresh market supply of more than 6 million 4/5-bushel cartons. As grapefruit are more likely to face rejection than other, less susceptible citrus, domestic consumers will have increasingly limited access to fresh grapefruit under the current regulations, particularly if Florida's bearing acreage continues to decline on average by 11 percent annually.

According to APHIS estimates, Federal expenditures on commercial packinghouse inspections of fresh fruit intended for domestic markets range from $8.95 million to $9.85 million per season. Under the proposed rule, commercial citrus packinghouse inspections by APHIS of fresh citrus intended for the domestic market for symptoms of citrus canker would no longer be required, resulting in significant Federal savings.

The proposed rule would also likely result in a lower supply of fresh citrus for Florida consumers. APHIS data indicate that nearly 30 percent of rejected fresh citrus shipments originally intended for the domestic market were redirected to markets within Florida. However, this same fresh citrus fruit diverted to markets within Florida represented only about 2 percent of all fresh citrus shipped within the State. The benefits of long-term preservation of the domestic market for Florida fresh citrus, less restrictive market access, costs savings of foregone inspections of fresh fruit for symptoms of citrus canker, and savings on packinghouse charges are expected to outweigh the additional costs imposed by the proposed changes to the regulations. The science-based revisions to the regulations would continue to prevent the spread of citrus canker to other States, including commercial citrus-producing States.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. In this section, we address these IRFA requirements for this proposed rule.

Reasons for Action

APHIS is taking these actions based on the determination that citrus fruit that has citrus canker symptoms and that has been treated using an APHIS-approved disinfectant is not an epidemiologically significant pathway for transmission of the disease. Citrus canker in Florida is pervasive, and eradication and quarantine zones within the State have not succeeded in controlling the spread of the disease within Florida. This action is being taken to relieve restrictions on the Florida citrus industry that we believe are no longer warranted while continuing to prevent the spread of citrus canker to other U.S. commercial citrus-producing States and territories.

The current citrus canker regulations place several restrictions on the interstate movement of citrus fruit from areas quarantined due to citrus canker, including APHIS inspection of fresh citrus intended for the domestic market, treatments, and interstate movement only under limited permit to States that do not produce citrus commercially. APHIS is proposing to implement a new protocol under which specified treatments would be required for Florida citrus shippers to move regulated fresh fruit to all States without the currently required APHIS inspection. This action would apply less restrictive measures for movement of fresh citrus from Florida while continuing to prevent the spread of citrus canker to areas free from the pest.

Objectives and Legal Basis for Proposed Rule

The objective of the proposed rule is to modify the current protocol contained in § 301.75–7 that stipulates the conditions under which fresh citrus fruit may be moved interstate from quarantined areas. Under the provisions of this proposed rule, a new mitigation strategy would eliminate the required APHIS inspection of each lot of finished fruit.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product if the Secretary determines that the

[5] Based on 5-year averages of shipments during the 2003–04 through 2007–08 seasons.

prohibition or restriction is necessary to prevent the dissemination of a plant pest or noxious weed within the United States. APHIS has determined that it is not necessary to prohibit the interstate movement of fruit from citrus canker quarantined areas that is commercially packed and treated with an APHIS-approved disinfectant in order to prevent the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the updated PRA and the supplemental RMA referred to earlier in this document and our judgment that the application of the measures that would be required under proposed § 301.75–7(a) would prevent the dissemination of plant pests within the United States.

Description and Estimated Number of Small Entities Regulated

Florida's citrus commercial packinghouses and fresh citrus producers comprise the industries that we expect to be directly affected by this proposed rule. The small business size standards for citrus fruit packing, as identified by the Small Business Administration (SBA) based upon the North American Industry Classification System (NAICS) code 115114 (Postharvest Crop Activities) is $6.5 million or less in annual receipts. There are currently 174 commercial packinghouses in Florida under an APHIS packinghouse compliance agreement, 56 of which are registered with the Florida Department of Agriculture and Consumer Services' Division of Fruit and Vegetables. While the classification of all of these establishments by sales volume is not available, it is estimated that approximately 40 of the 56 registered commercial packinghouses are the top-grossing citrus commercial packinghouses. The remaining packinghouses are small establishments known primarily as gift packers. At least 95 percent of Florida fresh citrus shipments are packed by the top 40 (23 percent) commercial packinghouses in the State.[6] The Fresh Shippers Report, as reported by the Citrus Administrative Committee, details quantities of fresh citrus shipped by the top 40 shippers each season.[7] During the 2007–08 season, annual sales for 14 of the top 40 shippers (35 percent) were below the SBA size standard of $6.5 million. It is estimated that at least 82 percent of Florida's citrus packers, including the small gift packers, would be considered small according to the SBA size standards.

The proposed rule is also expected to positively affect producers of fresh citrus in Florida currently facing an increasing number of lots rejected at the packinghouse level each season. Packing and elimination charges for growers are higher for fruit diverted to the intrastate or export markets, or processing plants. In addition, fruit diverted to processing yields lower revenues for growers who have already borne the higher costs of producing fruit intended for the fresh market.

A majority of the Florida citrus producers that would be affected by the proposed rule are small, based on 2007 Census of Agriculture data and SBA guidelines for entities classified within the farm categories Orange Groves (NAICS 111310) and Citrus (except Orange) Groves (NAICS 111320). SBA classifies producers in these categories with total annual sales of not more than $750,000 as small entities. According to 2007 Census data, there were a total of 6,061 citrus farms in Florida in 2007. Of this number, 90 percent had annual sales in 2007 of less than $500,000, which is well below the SBA's small entity threshold of $750,000.[8] Any costs associated with the proposed rule are expected to be minimal, especially given the producers' gains from fewer rejections of fresh citrus lots destined for the domestic market.

Producers of fresh fruit in other commercial citrus-producing States may also be impacted by the rule to the extent that the reintroduction of Florida fresh citrus changes the supply in these States. However, APHIS does not anticipate significant increases in fresh citrus supplies into these markets as a result of this proposed rule, as indicated by historic data on Florida fresh citrus shipments. According to 2007 Census data, there were a total of 15,658 citrus farms in the United States in 2007. Of this total, 329 were located in Arizona, 7,358 in California, 884 in Hawaii, 210 in Louisiana, and 750 in Texas. In each State, at least 91 percent of all farms had annual sales in 2007 of less than $500,000 and would be classified as small entities according to SBA guidelines.

Description and Estimate of Compliance Requirements

In general, this rule would not entail new reporting, recordkeeping, or other compliance requirements beyond those already required for shipment of Florida fresh citrus destined for domestic and export markets. The costs to packinghouses associated with certifying fruit for interstate movement are expected to be less than the costs associated with the current requirement that limited permits accompany shipments of fresh citrus from Florida that are moved interstate. In addition, under the current regulations, fresh citrus fruit from Florida destined for the domestic market must be packed in boxes with markings that indicate that fruit is prohibited from movement into other commercial citrus-producing States in order to obtain a limited permit. The proposed rule would eliminate the required limited permits and packaging requirements at a cost savings to packinghouses.

The annual cost of obtaining a Citrus Fruit Dealer License is less than $25. There is no cost to register as a commercial packinghouse, but the Florida Department of Agriculture does charge inspection fees and box taxes where applicable. Of the 174 packinghouses currently operating under an APHIS compliance agreement, we estimate that fewer than 10 would need to obtain a license or registration in order to obtain a compliance agreement with APHIS and meet the requirements of the proposed regulations.

Duplication, Overlap, and Conflict With Existing Rules and Regulations

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Regulatory Alternatives

An in depth discussion of the alternatives we considered in preparing this proposed rule may be found earlier in this document under the heading ''Evaluation of Risk Management Options'' as well as in the accompanying full economic analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings

[6] ''Fresh Shippers Report: 2007–08 Season Through July 31, 2008,'' Citrus Administrative Committee, August 8, 2008. *http://www.citrusadministrativecommittee.org/*

[7] Ibid.

[8] *Source:* SBA and *2007 Census of Agriculture.*

will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed amendments to the regulations providing for the interstate movement of regulated fruit from areas quarantined for citrus canker, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.75–1, the definition of *commercial packinghouse* is revised to read as follows:

§ 301.75–1 Definitions.

* * * * *

Commercial packinghouse. An establishment in which space and equipment are maintained for the primary purpose of disinfecting and packing citrus fruit for commercial sale. A commercial packinghouse must also be licensed, registered, or certified with the State in which it operates and meet all the requirements for the license, registration, or certification that it holds.

* * * * *

§ 301.75–4 [Amended]

3. Section 301.75–4 is amended as follows:

a. In paragraph (d)(2)(ii)(D), by removing the first sentence.

b. By removing paragraph (d)(6).

4. Section 301.75–7 is revised to read as follows:

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) Regulated fruit produced in a quarantined area or moved into a quarantined area for packing may be moved interstate with a certificate issued and attached in accordance with § 301.75–12 if all of the following conditions are met:

(1) The regulated fruit was packed in a commercial packinghouse whose owner or operator has entered into a compliance agreement with APHIS in accordance with § 301.75–13.

(2) The regulated fruit was treated in accordance with § 301.75–11(a).

(3) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(4) If the fruit is repackaged after being packed in a commercial packinghouse and before it is moved interstate from the quarantined area, the person that repackages the fruit must enter into a compliance agreement with APHIS in accordance with § 301.75–13 and issue and attach a certificate for the interstate movement of the fruit in accordance with § 301.75–12.

(b) Regulated fruit that is not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

(Approved by the Office of Management and Budget under control number 0579–0325)

Done in Washington, DC, this 26th day of June 2009.

Cindy Smith,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E9–15508 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2009–0010]

RIN 1557–AD24

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R–1360]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

[RIN 3064–AD45]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS–2009–0010]

RIN 1550–AC35]

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, ''the Agencies'') are issuing this notice of proposed rulemaking that would revise our rules implementing the Community Reinvestment Act (CRA). The proposed rule would incorporate into our rules recently adopted statutory language that requires the Agencies, when assessing an institution's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers. The proposal also would incorporate into our rules statutory language that allows the Agencies, when assessing an

institution's record, to consider as a factor capital investment, loan participation, and other ventures undertaken by nonminority-owned and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions.

DATES: Comments must be received by: July 30, 2009.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title ''Community Reinvestment Act Regulation'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2009–0010'' to submit or view public comments and to view supporting and related materials for this joint notice of proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2009–0010'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this joint notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2009–0010'' to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1360, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–AD45 by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* 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.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

OTS: You may submit comments identified by OTS–2009–0010, by any of the following methods:

- *Federal eRulemaking Portal-''Regulations.gov'':* Go to *http://www.regulations.gov,* under the ''more Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2009–0010'' to submit or view public comments and to view supporting and related materials for this proposed rule. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2009–0010.
- *Fax:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2009–0010.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments including

attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* under the More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS–2009–0010'' to view public comments for this rulemaking action.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–5618. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Policy, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Rebecca Lassman, Supervisory Consumer Financial Services Analyst, (202) 452–2080; or Brent Lattin, Senior Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie Caputo, Senior Compliance Program Analyst, Consumer Regulations Section, (202) 906–6549; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Community Reinvestment Act (CRA) requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution (hereinafter, ''institution'') in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.[1] The Agencies have promulgated substantially similar regulations to implement the requirements of the CRA.[2]

Discussion of the Proposal on Low-Cost Education Loans

Under the existing CRA regulations, education loans are evaluated as consumer loans.[3] An institution's consumer lending must be evaluated if consumer lending makes up a substantial majority of an institution's business. Institutions that do not meet this criterion may choose to have consumer loans evaluated when the institution's CRA record is being examined. Institutions must collect and maintain data about consumer loans if they choose to have those loans evaluated.[4] Like other consumer loans, institutions' education loans are generally evaluated by total number and amount; borrower characteristics (*i.e.,* distribution among borrowers of different income levels); geographic distribution (*i.e.,* distribution among borrowers in geographies with different income levels and whether the loans are made to borrowers in the institution's assessment areas); and, for large retail institutions, whether the education loan program is innovative or flexible in addressing the credit needs of low- or moderate-income individuals or geographies.[5]

Section 1031 of the Higher Education Opportunity Act, Public Law 110–315, 122 Stat. 3078 (August 14, 2008) (the ''HEOA''), revised the CRA to require the Agencies, when evaluating an institution's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the institution to low-income borrowers. 12 U.S.C. 2903(d). The revisions being proposed today would implement this statutory provision.

The Agencies are proposing to define ''low-cost education loans'' to mean (1) education loans originated by an institution through a U.S. Department of Education loan program or (2) any private education loan as defined in the Truth in Lending Act, including loans under a State or local education loan program, originated by an institution for a student at an ''institution of higher education,'' with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

Under the first prong of the definition, loans that institutions make through a Department of Education loan program would be considered ''low-cost education loans.'' Institutions currently make those loans through the Federal Family Education Loan (FFEL) Program. However, since Department of Education loan programs may change over time, the proposed definition does not specifically refer to any particular program by name.[6]

Under the second prong of the definition, ''private education loans'' that institutions make would be considered ''low-cost education loans,'' provided that the interest rates and fees are no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education. The proposal would adopt the terms ''private education loan,'' ''private educational lender,'' and ''postsecondary educational expenses,'' each of which is defined in the HEOA for purposes of the Truth in Lending Act. Section 1011 of the HEOA added section 140 of the Truth in Lending Act to provide the following definition:

[T]he term ''private education loan''—

(A) Means a loan provided by a private educational lender that—

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*); and

(ii) Is issued expressly for postsecondary educational expenses to a

[1] 12 U.S.C. 2903.

[2] *See* 12 CFR parts 25 (OCC), 228 (Board), 345 (FDIC), and 563e (OTS).

[3] ''Consumer loan'' is defined in the CRA regulations as a loan to one or more individuals for household, family, or other personal expenditures. Consumer loans include the following categories of loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. 12 CFR 25.12(j), 228.12(j), 345.12(j), and 563e.12(j).

[4] *See* 12 CFR 25.22(a)(1) and 25.42(c); 12 CFR 228.22(a)(1) and 228.42(c); 12 CFR 345.12(a)(1) and 345.42(c); and 12 CFR 563e.22(a)(1) and 563e.42(c).

[5] *See, e.g.,* 12 CFR 25.22 and 25.26; 228.22 and 228.26, 345.22 and 345.26, and 563e.22 and 563.26.

[6] The Agencies note that other Department of Education loan programs currently exist, such as the William D. Ford Direct Loan Program and the Federal Perkins Loan Program, in which loans are made directly by the Department of Education or a school rather than by a financial institution. As these programs do not involve lending by an institution, they are not relevant to the evaluation of CRA performance.

borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) Does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.[7]

In turn, HEOA defines a ''private educational lender'' to include, among others, any financial institution that solicits, makes, or extends private education loans.[8]

Although section 1031 of the HEOA is not expressly limited to loans for higher education, the Agencies have included this limitation in the definition of low-cost education loans. The proposal, thus, would provide for consideration of low-cost education loans to attend ''institutions of higher education,'' including accredited colleges, universities, and vocational schools, as discussed more fully below. The new statutory requirement to consider education loans was adopted as a part of the HEOA, which specifically addresses higher education reform. The HEOA defines ''postsecondary educational expenses'' to mean any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll). That definition includes tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.[9]

The Agencies are proposing to define ''low-cost education loan'' consistent with HEOA. The purpose of H.R. 4137, which introduced the incentive of CRA consideration for low-cost education loans, as stated in H.R. Report No. 500, was ''to make college more affordable and accessible;'' to ''expand college access and support for low-income and minority students;'' and to provide incentives for lenders to provide ''low-cost *private student loans* to low-income borrowers.'' [10] Although the HEOA does not define ''private student loan,'' it does define the similar term, ''private education loan,'' as discussed above.

Further, the HEOA defines the term ''education loan'' in other contexts. In Section 120 of the HEOA, ''education loan'' is defined as any loan made, insured, or guaranteed under the FFEL Program, any loan made under the William D. Ford Direct Loan Program, or a private education loan.[11] As discussed above, institutions' FFEL loans would be covered by the first prong of the definition, while private education loans would be covered by the second prong of the definition.[12]

The second prong of the definition would encompass any ''institution of higher education'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1001 and 1002. Such institutions generally include accredited public or non-profit colleges and vocational schools, accredited private colleges and vocational schools, and certain foreign institutions offering postsecondary education that are comparable to institutions of higher education in the United States based on standards approved by the U.S. Department of Education. The Agencies are not proposing to cover unaccredited colleges, universities, or vocational schools because we lack sufficient information regarding these institutions, but are soliciting comment on this issue.

The term ''low-income'' will have the same meaning as that term is defined in the existing CRA rule with respect to individuals.[13] Consequently, it will mean an individual income that is less than 50 percent of the area median income. If an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are ''low-income.'' [14]

Consistent with the statutory focus on the community in which an institution is chartered to do business and the regulatory emphasis on an institution's activities in its assessment area(s), the Agencies have clarified in the proposed revision that low-cost education loans will be considered as a factor if they are made to low-income borrowers in an institution's assessment area(s). This clarification also appears consistent with the legislative history of the Act, which indicates that the Agencies are to consider ''low-cost education loans provided by a financial institution to low-income borrowers in assessing and taking into account the record of a financial institution in meeting the credit needs *of its local community*.'' [15]

The Agencies propose to add the new provision addressing favorable CRA consideration for low-cost education loans to low-income borrowers to sections 25.21, 228.21, 345.21, and 563e.21 of title 12 of the Code of Federal Regulations. These sections are entitled, ''Performance tests, standards, and ratings, in general.'' They apply to all types and sizes of institutions, without regard to the performance test under which an institution is evaluated. The new provision also is applicable to all institutions.

The Agencies also are proposing a conforming amendment to Appendix A of the regulations to include consideration of low-cost education loans to low-income borrowers as a factor when assigning a rating to a financial institution.

Description of the Proposal on Activities Undertaken in Cooperation With Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

When the Agencies assess and take into account the community reinvestment record of a nonminority- or nonwomen-owned financial institution, the CRA allows the Agencies to consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.[16] The Agencies propose to incorporate this statutory language into their regulations and to clarify, consistent with the statutory language, that, in order to receive favorable CRA consideration, such activities need not also benefit the assessment area(s) or the broader statewide or regional area that includes the assessment area(s) of the nonminority- and nonwomen-owned

[7] Section 140(a)(7) of the Truth in Lending Act, as added by section 1011 of the HEOA.

[8] Section 140(a)(6)(A) of the Truth in Lending Act, as added by section 1011 of the HEOA.

[9] *See* 20 U.S.C. 1087ll (definition of ''cost of attendance'').

[10] H.R. Rep. No. 110–500 at 203, 297 (2007) (emphasis added).

[11] Section 120 of Public Law 110–315, 122 Stat. 3118 (Aug. 14, 2008). Sections 432 and 493 use the same definition.

[12] As noted above, the William D. Ford Direct Loan Program is a direct loan program where the loans are made by the Department of Education rather than a financial institution. Thus, this loan program is not relevant for purposes of CRA consideration for an institution.

[13] 12 CFR 25.12(m)(1), 228.12(m)(1), 345.12(m)(1), and 563e.12(m)(1).

[14] *See* ''Interagency Questions and Answers Regarding Community Reinvestment,'' 74 FR 498, 533 (Jan. 6, 2009) (Q&A § __.42(c)(1)(iv)–4).

[15] H. Rep. No. 110–500, at 366 (2007) (emphasis added).

[16] 12 U.S.C. 2903(b).

institution. Activities undertaken to assist minority- and women-owned financial institutions and low-income credit unions will be considered as part of the overall assessment of the nonminority- and nonwomen-owned institution's CRA performance.

This proposed revision to the rule would reinforce to examiners, financial institutions, and the public that the Agencies may consider and take into account nonminority- and nonwomen-owned financial institutions' activities in connection with minority- and women-owned financial institutions and low-income credit unions. The Agencies note their recent revisions to the ''Interagency Questions and Answers Regarding Community Reinvestment'' that clarify this point.[17] The proposed rule is intended to codify this clarification in the rule.

The Agencies propose to add the new provision addressing favorable CRA consideration for activities in cooperation with minority- and women-owned financial institutions and low-income credit unions to §§ 25.21, 228.21, 345.21, and 563e.21 of title 12 of the Code of Federal Regulations. As discussed above, these sections apply to all types and sizes of institutions, without regard to the performance test under which an institution is evaluated. The new provision also is applicable to all financial institutions.

The Agencies also are proposing a conforming amendment to Appendix A of the regulations to include consideration of a financial institution's activities in cooperation with minority- and women-owned financial institutions as a factor when assigning a rating to the institution.

Request for Comments

General Request for Comments

The Agencies request comments on the proposed revisions. Smaller financial institutions are invited to comment on whether the proposed regulations should be modified to address any implementation issues unique to their lines of business or to provide additional flexibility.

Request for Comments on ''Education Loans''

The new statutory provision specifies that the Agencies must consider low-cost ''education loans'' to low-income borrowers. The Agencies specifically request comment on how to define ''education loans.''

- As proposed, the definition includes only loans for post-secondary education (*i.e.*, education at a level beyond high school). As explained above, section 1031 of the HEOA is not expressly limited to loans for higher education. Should the definition also extend to loans for elementary or secondary education?
- Should the definition include loans made for education expenses at an ''institution of higher education'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (''HEA''), 20 U.S.C. 1001 and 1002, which would include accredited public and private colleges and universities, whether for-profit or nonprofit, as well as accredited vocational institutions that prepare students for gainful employment in a recognized occupation and certain institutions outside the United States? Should the scope be expanded or narrowed?
- Should the scope of the definition be expanded to include loans made for education expenses at any ''covered educational institution'' as that term is defined in section 140 of the Truth in Lending Act, 15 U.S.C. 1650, which would also encompass unaccredited institutions, consistent with the Board's proposed approach to defining that term for purposes of Regulation Z?[18] Are there reasons that weigh against including loans to attend unaccredited institutions?
- Should the scope of the definition be narrowed to encompass only loans made for education expenses at an ''institution of higher education'' as that term is defined for general purposes in section 101 of the HEA, 20 U.S.C. 1001, which is limited to accredited public and nonprofit colleges, universities, and employment training schools in the United States for high school graduates or the equivalent, and public or nonprofit educational institutions in the United States that admit students beyond the age of compulsory school attendance, even if they are not high school graduates or the equivalent?
- ''Private education loans,'' as defined in section 140(a)(7) of the Truth in Lending Act, would include education loans made by financial institutions under local and State education loan programs. Should all education loans offered to low-income borrowers under State or local education programs, regardless of whether the fees and costs are comparable to those under Department of Education programs, be eligible for CRA consideration? Should private loans not made, insured, or guaranteed under a Federal, State, or local education program be considered for CRA purposes?
- ''Private education loans,'' as defined in section 140(a)(7) of the Truth in Lending Act, include only closed-end, unsecured loans. That means, for example, that if a borrower obtained a home equity loan for a student's education, it would not be considered a private education loan. Is it appropriate to limit CRA consideration to only closed-end, unsecured private education loans? Why or why not?
- The Agencies request comment on whether our proposal to limit education loans to those originated by the institution, rather than purchased by the lender, is appropriate. Why or why not?

Request for Comments on ''Low-Cost'' Loans.

The statutory provision requires the Agencies to consider institutions' ''low-cost'' education loans to low-income borrowers, but does not define ''low-cost.'' Guaranteed education loans provided by financial institutions through the U.S. Department of Education's Federal Family Education Loan Program (FFEL Loans) are subject to maximum interest rates, which are calculated using statutory formulas. These rates are the same as rates charged to borrowers under the William D. Ford Direct Loan Program. Currently, the interest rate in effect for unsubsidized fixed-rate loans under the FFEL Stafford loan program or the William D. Ford Direct Loan program, which are made to undergraduate and graduate students, is 6.8 percent. The current interest rate for FFEL Plus loans, which are made to parents of dependent undergraduate students and to graduate or professional degree students, is 8.5 percent.

Although variable-rate loans are no longer available under the Department of Education programs, the Department of Education publishes rates annually for those variable rate student loans that remain outstanding. The rate effective July 1, 2008 through June 30, 2009, for variable-rate loans in repayment is 4.21 percent under both the FFEL Stafford loan program and the William D. Ford Direct Loan program. Fees that may be charged by lenders on FFEL Stafford and Plus loans are also comparable to fees charged on loans made directly by the U.S. Department of Education. The loan fee/origination fee on a Direct Stafford loan is 2.5 percent of the loan amount; the loan fee/origination fee on a Direct Plus loan is 4 percent.

The Agencies are proposing to define ''low-cost education loans'' as education loans that are originated by financial institutions through a program of the

[17] 74 FR 498, 507 (Jan. 6, 2009) (Q&A § __.12(g)–4).

[18] *See* 75 FR 12464 (Mar. 24, 2009).

U.S. Department of Education or any private education loans, including loans under State or local education loan programs, originated by financial institutions with interest rates and fees no greater than those of comparable education loan programs offered by the U.S. Department of Education. The Agencies note that currently the rates and fees allowed under the FFEL Stafford loan program and the FFEL Plus loan program would typically be used to evaluate whether an institution's education loan is low cost.

• Is the Agencies' definition of the term ''low-cost education loans'' appropriate? If not, how should the Agencies define low-cost education loans?

• How should the Agencies determine whether a private education loan (including a loan made by an institution under a State or local education loan program) is ''comparable'' to a Department of Education loan?

• Should the Agencies use the lowest or highest rate and fees available under the comparable Department of Education program?

Request for Comments on ''Low-Income Borrower''

The CRA regulations currently define ''low-income'' to mean an individual income that is less than 50 percent of the area median income. The Agencies propose to use that definition to define ''low-income borrower.''

However, various education programs offered by the U.S. Department of Education are targeted to individuals who have financial needs; and the criteria for the programs vary. Most relevant, for example, are the Federal Student Aid programs available to students seeking assistance for education programs beyond high school. Most Federal Student Aid programs, other than unsubsidized programs available through financial institutions, including unsubsidized Stafford and FFEL Plus loans, consider ''financial need.'' Financial need is determined by dividing the cost of attendance at the school by the expected family contribution (EFC). The EFC is calculated according to a formula that considers family taxable and untaxed income, assets and benefits, e.g., unemployment, family size, and the number of family members who will be attending college. Another example of a Department of Education program that considers income is the TRIO program, which encompasses the Upward Bound, Talent Search, and Student Support Services programs. The TRIO program is targeted to ''low-income individuals,'' meaning an individual whose family's taxable income for the preceding year did not exceed 150 percent of the poverty level amount.

• The proposed rule provides that the term, ''low-income,'' will have the same meaning as that term is defined in the existing CRA rule with respect to individuals. Consistent with current guidance, if an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are ''low-income.'' Should the Agencies consider defining ''low-income'' for purposes of this proposed provision differently than the term is already defined in the CRA regulation? If so, why and how? Specifically, how should the Agencies treat the income of a student's family or other expected family contributions to ensure that the CRA consideration provided is consistent with HEOA's focus on low-income borrowers?

Request for Comments Regarding Other Education Loan Issues

As proposed, institutions would receive favorable qualitative consideration for originating ''low-cost education loans to low-income borrowers'' as a factor in the institutions' overall CRA rating. Such loans would be considered responsive to the credit needs of the institutions' communities.

• As discussed above, under the current CRA regulations, institutions may choose to have education loans evaluated as consumer loans under the lending test applicable to the institution. If an institution opts to have education loans evaluated, the loans would be evaluated quantitatively, based on the data the institution provides. Should the agencies also allow an institution to receive separate quantitative consideration for the number and amount of low-cost education loans to low-income borrowers as part of its CRA evaluation under the performance test applicable to that institution, without regard to other consumer loans?

Education loans, including those that do not qualify for consideration as ''low-cost education loans for low-income borrowers'' (*e.g.*, purchased education loans, loans that are not low-cost, and loans that are not made to low-income borrowers) would continue to be eligible for consideration as consumer loans, at an institution's option, under existing CRA rules.

As discussed above, the Agencies propose to insert the revision regarding low-cost education loans to low-income borrowers into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of the performance test under which an institution is evaluated.

• Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement in the regulation?

Request for Comments on the Proposed Inclusion in the CRA Regulations of the Statutory Language Regarding Activities Undertaken in Cooperation With Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

The agencies request general comment on the proposal to include in their CRA regulations the statutory language that allows the agencies to consider as a factor in a nonminority- or nonwomen-owned financial institution's CRA evaluation capital investments, loan participations, and other ventures undertaken in cooperation with minority- and women-owned financial institutions and low-income credit unions, consistent with prior agency guidance.[19]

In addition, as discussed above, the Agencies propose to insert the revision regarding institutions' activities in cooperation with minority- and women-owned institutions and low-income credit unions into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of which performance test under which an institution is evaluated.

• Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement?

Request for Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 133 Stat. 1338, 1471 (Nov. 12, 1999), requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. Therefore, the Agencies specifically invite your comments on how to make this proposal easier to understand. For example,

• Have we organized the material to suit your needs? If not, how could this material be better organized?

• Are the requirements in the proposed regulations clearly stated? If

[19] *Interagency Questions and Answers Regarding Community Reinvestment*, 74 FR 498, 507 (Jan. 6, 2009).

not, how could the regulations be more clearly stated?

• Do the proposed regulations contain language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make them easier to understand?

• What else could we do to make the regulations easier to understand?

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), each agency reviewed its proposed rule and determined that there are no new collections of information contained therein. However, the amendments may have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for consumer loans.

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' for banking purposes as a bank or savings association with $165 million or less in assets. *See* 13 CFR 121.201. Each agency has reviewed the impact of this joint proposed rule on the small entities subject to its regulation and supervision and certifies that the proposal will not have a significant economic impact on a substantial number of the small entities that it regulates and supervises.

The proposal would incorporate into the CRA regulations statutory language that requires the Agencies to consider as a factor in evaluating an institution's CRA performance low-cost education loans provided by the financial institution to low-income borrowers. The proposal also would incorporate into the CRA regulations existing statutory language that allows the agencies to consider as a factor in evaluating CRA performance certain activities of nonminority- and nonwomen-owned financial institutions entered into in cooperation with minority- and women-owned financial institutions and low-income credit unions. However, the joint proposal would not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not specify that small institutions must engage in any particular types of lending, just that they will be evaluated on the types of lending in which they choose to engage. Accordingly, a regulatory flexibility analysis is not required.

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have each determined that its portion of this joint proposed rule is not a significant regulatory action as defined in Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS have determined that this joint proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this joint proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277 (5 U.S.C. 601 note).

OCC and OTS Executive Order 13132 Determination

The OCC and the OTS have each determined that its portion of this joint proposed rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

2. In § 25.21, add new paragraphs (e) and (f) to read as follows:

§ 25.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50

percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means:

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 25, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 25—Ratings

(a) * * * (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 is revised to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 through 2908.

2. In § 228.21, add new paragraphs (e) and (f) to read as follows:

§ 228.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the Board considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means:

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a State or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the Board considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 228, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 228—Ratings

(a) * * * (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 228.21 and 228.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 is revised to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1920, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

2. In § 345.21, add new paragraphs (e) and (f) to read as follows:

§ 345.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means:

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a State or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest

rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 345, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 345—Ratings

(a) * * * (1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2908.

2. In § 563e.21, add new paragraphs (e) and (f) to read as follows:

§ 563e.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the OTS considers, as a factor, low-cost education loans provided by the savings association to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means:

(1) Education loans originated by the savings association through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a State or local education loan program), originated by the savings association for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the OTS considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

3. In Appendix A to part 563e, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 563e—Ratings

(a) * * * (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 563e.21 and 563e.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Dated: June 19, 2009.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 23, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 23rd day of June 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: June 17, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–15204 Filed 6–29–09; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Notice of Proposed Rulemaking Regarding Possible Amendment of the Temporary Liquidity Guarantee Program To Extend the Transaction Account Guarantee Program With Modified Fee Structure

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is issuing this Notice of Proposed Rulemaking to present and request comment on two alternatives for phasing out the Transaction Account Guarantee (TAG) component of the Temporary Liquidity Guarantee Program (TLGP). Under the first proposed alternative, the FDIC's guarantee of deposits held in qualifying noninterest-bearing transaction accounts subject to the TAG program would continue until December 31, 2009. There would be no modification of the existing fee structure or any other change in the FDIC's guarantee of noninterest-bearing transaction accounts, as provided for in the current regulation.

Under the second proposed alternative, the TAG program would be extended for six months until June 30, 2010. Insured depository institutions (IDIs) that are currently participating in the TAG program would be provided a single opportunity to opt out of the extended TAG program. IDIs that opt

out of the extended TAG program would be required to update their disclosure postings and notices to indicate that they are no longer participating in the program.

Under this proposal, IDIs choosing to participate in the extended TAG program, would be subject to increased fees for the FDIC's extended guarantee of its qualifying noninterest-bearing transaction accounts. Also, IDIs participating in the extended TAG program might be required to update their disclosures related to the TAG program.

DATES: Written comments must be received by the FDIC no later than July 30, 2009.

ADDRESSES: You may submit comments on the Final Rule, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN #3064–AD37 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/final.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*; A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov*; Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov*; Joe DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov*; Lisa D. Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or *larquette@fdic.gov*; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov*; or Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC adopted the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[1] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

On October 23, 2008, the FDIC's Board of Directors (Board) initially authorized the publication in the **Federal Register** of an interim rule that outlined the parameters of the TLGP.[2] Designed to assist in the stabilization of the nation's financial system, the FDIC's TLGP was designed to be a temporary program and is comprised of two distinct components: the Debt Guarantee Program (DGP), pursuant to which the FDIC guarantees certain senior unsecured debt issued by entities participating in the TLGP, and the TAG program, pursuant to which the FDIC guarantees all funds held at participating IDIs (beyond the standard maximum deposit insurance limit) in qualifying noninterest-bearing transaction accounts.

The DGP generally permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire on the earlier of the maturity or conversion of the debt (for mandatory convertible debt) or June 30, 2012. On March 17, 2009, to reduce market disruption at the conclusion of the debt guarantee component of the TLGP and to facilitate the orderly phase-out of the program, the Board adopted an interim rule that, among other things, provided for a limited four-month extension for the issuance of senior unsecured debt under the DGP.[3]

At the time the TLGP was developed, there was concern that many account holders might withdraw their uninsured balances from IDIs. The TAG component of the TLGP was designed to improve public confidence and encourage depositors to leave these large account balances at IDIs of various sizes. Loss of these accounts would have potentially impaired the funding structure of the banking institutions that relied on them, as well as other institutions that had relationships with these banks.

The TAG program has been an important source of stability for banks with large transaction account balances. Over 7,100 IDIs are participating in the TAG program, with an estimated $700 billion of deposits in noninterest-bearing transaction accounts (that would not otherwise be insured) currently subject to the FDIC's guarantee. Although liquidity in financial markets has not returned to pre-crisis levels, financial market volatility and risk aversion have moderated since the fall of 2008 when the FDIC implemented the TAG program as part of the TLGP.

The TAG program is scheduled to expire on December 31, 2009. As with the DGP, the FDIC is committed to providing an orderly phase-out of the TAG program for participating IDIs and their depositors. To that end, and as discussed in more detail below, the FDIC proposes and requests comment on two alternatives for successfully concluding the TAG program.

II. Proposed Alternatives for Concluding the Transaction Account Guarantee Program

The FDIC proposes to conclude its guarantee of noninterest-bearing transaction accounts under the TAG program using one of the alternatives that follow. In general, Alternative A would permit the program to expire on December 31, 2009, as provided for in existing regulations. Alternative B would extend the TAG program until June 30, 2010, but the extension would be coupled with increased fees for participation and possible new disclosure requirements.

A. Alternative A

Alternative A would preserve the current regulation regarding the duration of the FDIC's guarantee for coverage of deposits in noninterest-bearing transaction accounts pursuant to the TAG program. Under the current

[1] See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response.

Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

[2] 73 FR 64179 (October 29, 2008). This Interim Rule was finalized and a Final Rule was published in the **Federal Register** on November 26, 2008. 73 FR 72244 (November 26, 2008).

[3] 74 FR 12078 (March 23, 2009). This Interim Rule was finalized and a Final Rule was published in the **Federal Register** on June 3, 2009. 74 FR 26521 (June 3, 2009).

All IDIs and those other participating entities that issued debt under the TLGP on or before April 1, 2009, may participate in the extended DGP without application to the FDIC. Other participating entities that did not issue FDIC-guaranteed debt by April 1, 2009, may apply to participate in the extended DGP. 12 CFR 370.2(n); 370.3(h)(vi).

regulation, the FDIC's guarantee of noninterest-bearing transaction accounts expires on the earlier of the date of opt-out (if an IDI opted out of the TAG program) or December 31, 2009.[4] Any IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in its lobby, branch(es), and Web site, if applicable, that discloses whether the IDI is participating in the TAG program.[5] Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.[6] In addition, even those IDIs that are not participating in the TAG program are required to disclose that deposits in noninterest-bearing transaction accounts continue to be insured for up to $250,000, pursuant to the FDIC's general deposit insurance rules.[7] At this time, IDIs participating in the TAG program pay quarterly an annualized 10 basis point assessment on any deposit amounts that exceed the existing deposit insurance limit.[8]

B. Alternative B

Under the proposed Alternative B, the TAG program would be extended through June 30, 2010, six months beyond the current expiration date of December 31, 2009. The extended guarantee would apply only to noninterest-bearing transaction accounts maintained at IDIs that do not opt out of the extended TAG program, as discussed below. If an IDI that is currently participating in the program opts out, the FDIC's guarantee would expire as scheduled on December 31, 2009.

Increased Fees for Participation in the Extended TAG Program

If the TAG program is extended, the FDIC expects to increase fees to support its continued guarantee. The cost of providing guarantees for noninterest-bearing transaction accounts at failed IDIs since the inception of the TAG program already has exceeded projected total TAG program revenue through the end of December 2009. The FDIC projects additional failures of IDIs through the end of the year that will result in overall TAG losses that are expected to considerably exceed revenues. (Revenues generated from fees associated with the DGP are expected to cover TAG losses as well as losses incurred by the FDIC under the DGP.) In an effort to balance the income generated from TAG fees with potential losses associated with the TAG program, during the extension period, the FDIC proposes to charge an annualized rate of 25 basis points (rather than the current 10 basis points) on deposits in noninterest-bearing transaction accounts. The fee would continue to be collected quarterly in the same manner as provided for in existing regulations.

Limited Opportunity To Opt Out of Extended TAG Program

Because of the increase in fees and the other regulatory modifications associated with an extension of the TAG program, the FDIC proposes to offer participating IDIs a single opportunity to opt out of the TAG extension. An IDI that wishes to opt out of the TAG extension would be required to provide the FDIC with notice of its intent to opt out by submitting an e-mail with the subject line ''TLGP Election Form Opt Out Requested—Cert No. XXXXX'' to *dcas@fdic.gov*. The e-mail would be required to include the following information: Name of the IDI; FDIC certificate number; City, State, and zip code for the IDI; contact name and contact information (telephone number and e-mail address); a concise statement that the IDI would like to opt out of the TAG program effective January 1, 2010; and confirmation that, no later than November 15, 2009, the IDI will post a notice in the lobby of its main office, each domestic branch, and if it offers Internet deposit services, on its Web site, clearly indicating that funds held in noninterest-bearing transaction accounts that are in excess of the standard maximum deposit insurance amount will not be guaranteed under the TAG program after December 31, 2009.

Once this information has been received and processed, FDIC staff would contact the IDI to confirm the IDI's opt out decision. At this time, FDIC staff also would be able to provide a PDF document of the IDI's Election Form that would indicate the IDI's opt out decision regarding the TAG program (available for download via FDIC*connect*).

Disclosure Requirements

Under regulations governing the TAG program, each IDI that offers noninterest-bearing transaction accounts is required to post a prominent notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating whether the institution is participating in the TAG program.[9] If an IDI is participating in the TAG program, the notice must state that funds held in noninterest-bearing transaction accounts at the institution are guaranteed in full by the FDIC. Although existing regulations do not require specific language to appear in disclosures regarding the TAG program, the notices must be provided in simple, readily understandable text. Also, if the IDI uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the TAG program, the IDI must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee as to the swept, transferred, or reclassified funds.[10] Existing regulations provide sample disclosures for IDIs that participate and for those that do not participate in the TAG program.

If the expiration date of the TAG program is extended, participating IDIs that do not opt out of the extended TAG program may be required to amend these disclosures. The current TAG program disclosure postings and notices would suffice, as long as those notices continue to be accurate and, in particular, do not indicate that the FDIC's guarantee will apply only through December 31, 2009. Disclosures that indicate that the FDIC's guarantee under the TAG program will terminate on December 31, 2009, would have to be updated to reference June 30, 2010, as the extended termination date. Also, on or before November 15, 2009, participating IDIs that opt out of the extended TAG program would be required to update their disclosures to inform customers and depositors that, beginning on January 1, 2010, they will no longer participate in the TAG program and the deposits in noninterest-bearing transaction accounts will no longer be guaranteed in full by the FDIC.

III. Request for Comments

The FDIC requests comments on every aspect of this notice and particularly asks commenters to indicate a preference for Alternative A or Alternative B (or some other alternative) as a means of providing an orderly phase out of the FDIC's TAG program.

In addition, the FDIC requests comment on the following questions:

- If the TAG program is extended, is six months an appropriate time for the extension? If not, what would be considered an appropriate extension

[4] 12 CFR 370.4(a).

[5] 12 CFR 370.5(h)(5).

[6] *Id.*

[7] *Id.*

[8] 12 CFR 370.7(c).

[9] 12 CFR 370.5(h)(5).

[10] *Id.*

period for the TAG program? Please provide reasons to support your comment.

• When the TAG program was modified to include an FDIC-guarantee for NOW accounts, the FDIC's guarantee extended only to those NOW accounts with interest rates no higher than 0.50 percent. The interest rate limitation placed on such accounts was comparable to the average effective Federal funds rates and significantly below the one month CD rates and money market fund rates. The NOW interest rate limitation for purposes of the TAG program is now almost three times the Federal funds rate, double the one month CD rate, and comparable to the average money market deposit account rate.

Should the FDIC reduce the maximum interest rate for NOW accounts that qualify for the FDIC's guarantee under the TAG program? For example, would placing an interest rate limit on NOW accounts of no higher than 0.25 percent be appropriate? If not, what would be considered an appropriate interest rate limitation for NOW accounts? Please provide reasons to support your comment.

• In order to balance the income generated from TAG fees with potential losses associated with the TAG program, during the extension period the FDIC has proposed to charge an annualized rate of 25 basis points (rather than the current 10 basis points) on deposits in noninterest-bearing transaction accounts. Is this increase in fees appropriate? If not, what fee should be charged by the FDIC to cover potential losses caused by an extension of the TAG program? Please provide reasons to support your comment.

IV. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be ''small entities.'' The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the Alternative B of the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. (Alternative A, as described in the proposed rule, represents no change from the FDIC's existing regulation. As such, Alternative A is not likely to have a significant economic impact on a substantial number of small entities.)

Currently 7,107 IDIs participate in the TAG program, of which approximately 3,744, or 52.7 percent are small entities. Within the universe of small institutions, 1,072, or 28.6 percent did not have TAG eligible deposits as of the March 2009 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, ''March 2009 Call Reports''); thus, they were not required to pay the 10 basis point fee currently assessed for participation in the TAG program. Assuming these IDIs do not change circumstances and do not opt out as provided in Alternative B, there would be no impact on this group if the proposed fee increase contained in Alternative B were adopted. As to the remaining 2,672 small entities that had TAG eligible deposits as of the March 2009 Call Reports, they would have the opportunity to opt out of the extended TAG program if Alternative B were adopted. However, assuming these 2,672 small entities remain in the TAG program if Alternative B is adopted, the FDIC asserts that Alternative B described in the proposed rulemaking could have some impact on a substantial number of them that remain participants in the TAG program during the extension period.

Nevertheless, the FDIC has determined that, were Alternative B of the proposed rule to be adopted, the economic impact on small entities will not be significant for the following reasons. With respect to the fee increase from 10 basis points to 25 basis points if Alternative B were adopted, based on figures from the March 2009 Call Reports, the average fee increase for IDIs participating in the extended TAG program would be $2,200 annually, representing 0.8 percent of the average net operating income before taxes. In addition, because Alternative B proposed only a six-month extension, the actual average fee would be less than the annualized projection. Moreover, the FDIC asserts that the economic benefit of the six-month extension of Alternative B would outweigh the increased fee associated with participation in that the small entities would benefit from the extended time period within which to phase out the TAG program as financial markets continue to stabilize.

With respect to amending the disclosures related to the TAG program if Alternative B is adopted, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they pay a fee) would be de minimus in nature and would be outweighed by the economic benefit of the six-month extension.

Accordingly, if adopted in final form, neither Alternate A nor Alternate B of the proposed rule would have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. Alternative B of the Notice of Proposed Rulemaking contains reporting and disclosure requirements that, if adopted, would revise an existing OMB-approved information collection, entitled the ''Temporary Liquidity Guarantee Program'' (OMB No. 3064–0166). Specifically, section 370.5(c)(2) allows IDIs participating in the TAG program on October 31, 2009, to opt out of the program effective January 1, 2010. In addition, section 370.5(g)(2)(vi) requires institutions that opt out of the TAG program to disclose to customers that funds in excess of the standard maximum deposit insurance amount will no longer be guaranteed under the TAG program after December 31, 2009. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

Affected public: Participating IDIs—7,109.

Estimated Number of Respondents:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—3,555.

Disclosure to customers of TAG program guarantee extension—3,554.

Frequency of Response:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—once.

Disclosure to customers of TAG program guarantee extension—once.

Average Time per Response:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—1 hour.

Disclosure to customers of TAG program guarantee extension—1 hour.

Estimated Annual Burden:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—3,555 hours.

Disclosure to customers of TAG program guarantee extension—3554 hours.

Current annual burden—382,214 hours.

Total new burden—7,109 hours

Total annual burden—389,323 hours.

The FDIC is requesting comment on the proposed new TLGP-related information collection. The FDIC is also giving notice that the proposed collection of information has been submitted to OMB for review and approval. Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Interested parties are invited to submit written comments on the estimated burden for opt-out of the TAG program and disclosures to customers of discontinuation of TAG program guarantees by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment 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, Room 3208, Washington, DC 20503. All comments should refer to the name and number of the collection.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposed regulation easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the proposed regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes to the format would make the proposed regulation easier to understand?
- What else could the FDIC do to make the proposed regulation easier to understand?

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the measure of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 370 of chapter III of Title 12 of the Code of Federal Regulations as follows:

PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

1. The authority citation for part 370 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth), 1820(f), 1821(a), 1821(c), 1821(d), 1823(c)(4).

2. Amend § 370.2 as follows:

a. Revise paragraph (g); and

b. Revise paragraph (h)(4); to read as follows:

§ 370.2 Definitions.

* * * * *

(g) *Participating entity.* The term ''participating entity'' means with respect to each of the debt guarantee program and the transaction account guarantee program,

(1) An eligible entity that became an eligible entity on or before December 5, 2008 and that has not opted out, or

(2) An entity that becomes an eligible entity after December 5, 2008, and that the FDIC has allowed to participate in the program, except that a participating entity that opts out of the transaction account guarantee program in accordance with § 370.5(c)(2) ceases to be a participating entity in the transaction account guarantee program effective on January 1, 2010.

(h) * * *

(4) Notwithstanding paragraph (h)(3) of this section, a NOW account with an interest rate above 0.50 percent as of November 21, 2008, may be treated as a noninterest-bearing transaction account for purposes of this part, if the insured depository institution at which the account is held reduces the interest rate on that account to 0.50 percent or lower before January 1, 2009, and commits to maintain that interest rate at no more than 0.50 percent at all times during the period in which the institution is participating in the transaction account guarantee program.

* * * * *

3. Amend § 370.4 by revising paragraph (a) to read as follows:

§ 370.4 Transaction Account Guarantee Program.

(a) In addition to the coverage afforded to depositors under 12 CFR Part 330, a depositor's funds in a noninterest-bearing transaction account maintained at a participating entity that is an insured depository institution are guaranteed in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008 through:

(1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;

(2) December 31, 2009, in the case of an entity that opts out effective on January 1, 2010; or

(3) June 30, 2010, in the case of an entity that does not opt out.

* * * * *

4. Amend § 370.5 as follows:

a. Revise paragraph (c);

b. Revise paragraph (g); and

c. Revise paragraph (h)(5), to read as follows:

§ 370.5 Participation.

* * * * *

(c) *Opt-out and opt-in options.*

(1) From October 14, 2008 through December 5, 2008, each eligible entity is a participating entity in both the debt

guarantee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, December 5, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.

(2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such an election to opt out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

* * * * *

(g) *Procedures for opting out.*

(1) Except as provided in paragraph (g)(2) of this section, the FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business Web site, FDICconnect. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election or their affirmative decision to opt in.

(2) Pursuant to paragraph (c)(2) of this section a participating entity may opt out of the transaction account guarantee program by submitting to the FDIC on or before 11:59 p.m. EDST on October 31, 2009 an e-mail conveying the entity's election to opt out. The subject line of the e-mail must include: ''TLGP Election to Opt Out—Cert. No. ____ .'' The e-mail must be addressed to *dcas@fdic.gov* and must include the following:

(i) Institution Name;

(ii) FDIC Certificate number;

(iii) City, State, ZIP;

(iv) Name, Telephone Number and E-mail Address of a Contact Person;

(v) A statement that the institution is opting out of the transaction account guarantee program effective January 1, 2010; and

(vi) Confirmation that no later than November 15, 2009 the institution will post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating that funds held in non-interest bearing transaction accounts that are in excess of the standard maximum deposit insurance amount will not be guaranteed under the transaction account guarantee program after December 31, 2009.

(h) * * *

(5) Each insured depository institution that offers noninterest-bearing transaction accounts must post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating whether the institution is participating in the transaction account guarantee program. If the institution is participating in the transaction account guarantee program, the notice must state that funds held in noninterest-bearing transactions accounts at the entity are guaranteed in full by the FDIC.

(i) These disclosures must be provided in simple, readily understandable text. Sample disclosures are as follows:

For Participating Institutions

[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through June 30, 2010, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from the coverage available under the FDIC's general deposit insurance rules.

For Non-Participating Institutions

[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured for up to $250,000 under the FDIC's general deposit insurance rules.

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee with respect to the swept, transferred, or reclassified funds.

* * * * *

5. Amend § 370.7 by revising paragraph (c) to read as follows:

§ 370.7 Assessments for the Transaction Account Guarantee Program.

* * * * *

(c) *Amount of assessment.*

(1) Except as provided in paragraph (c)(2) of this section any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (each, a ''Call Report'') in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c).

(2) Beginning on January 1, 2010, a participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly an annualized 25 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Call Report in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c).

(3) The assessments provided in this paragraph (c) shall be in addition to an institution's risk-based assessment imposed under Part 327.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of June, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–15377 Filed 6–29–09; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 724

[No. USN–2008–0009]

RIN 0703–AA86

Naval Discharge Review Board

AGENCY: Department of the Navy, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is amending its regulations to reflect the name change of the Naval Council of Personnel Boards to the Secretary of the Navy Council of Review Boards and to update other administrative information pertaining to the Naval Discharge Review Board.

DATES: *Comment date:* Interested parties should submit written comments on or before August 31, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

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

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket or RIN number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tanya M. Cruz, JAGC, U.S. Navy, Office of the Judge Advocate General (Administrative Law), Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 703–614–7403.

SUPPLEMENTARY INFORMATION: The Department of the Navy is amending 32 CFR part 724 to reflect the name change of the Naval Council of Personnel Boards to the Secretary of the Navy Council of Review Boards and to update other administrative information pertaining to the Naval Discharge Review Board.

Interested persons are invited to comment in writing on this amendment. All written comments received will be considered in making the proposed amendments to 32 CFR part 724. It has been determined that this proposed rule amendment is not a major rule within the criteria specified in Executive Order 12866, as amended by Executive Order 13258, and does not have substantial impact on the public.

Matters of Regulatory Procedure

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 724 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that 32 CFR part 724 does not contain a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–511. ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 724 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 724 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 724

Administrative practice and procedure, Archives and records, and Military personnel.

For the reasons set forth in the preamble, the Department of the Navy proposes to amend 32 CFR part 724 as follows:

PART 724—NAVAL DISCHARGE REVIEW BOARD

1. The authority citation for part 724 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1553.

2. Section 724.116 is amended by revising the section heading to read as follows:

§ 724.116 Counsel/Representative.

* * * * *

§ 724.118 [Amended]

3. Section 724.118 is amended by removing ''and medical'' in the second sentence.

4. Section 724.201 is revised to read as follows:

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Secretary of the Navy Council of Review Boards. On December 6, 2004, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) approved the change in name from Naval Council of Personnel Boards to Secretary of the Navy Council of Review Boards. By SECNAVINST 5730.7 series, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Secretary of the Naval Council of Review Boards. SECNAVINST 5420.135 series states the organization, mission, duties and responsibilities of the Secretary of the Naval Council of Review Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and the Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09b26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 099b26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission Statement:

To administer and supervise assigned boards and councils.

§ 724.221 [Amended]

5. Section 724.221 is amended in paragraph (a) by removing ''or at another site within the forty-eight contiguous states.''

§ 724.222 [Amended]

6. Section 724.222 is amended by revising paragraph (b) to read as follows:

§ 724.222 Personal appearance discharge hearing sites.

* * * * *

(b) In addition, as permitted by available resources, NDRB Panels may travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews.

§ 724.223 [Amended]

7. Section 724.223 is amended in paragraph (d) by removing ''NCPB'' and adding ''NDRB'' in its place.

Subpart C—Director, Secretary of the Navy Council of Review Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

8. The Subpart C heading is revised to read as set forth above.

9. Section 724.302 is amended as follows:

a. The section heading is revised to read as set forth below; and

b. Paragraph (h) is amended by removing ''Naval Council of Personnel Boards'' and adding ''Secretary of the Navy Council of Review Boards'' in its place.

§ 724.302 Functions: Director, Secretary of the Navy Council of Review Boards.

* * * * *

§ 724.303 [Amended]

10. Section 724.303 is amended in paragraph (e) by removing ''5211.5C'' and adding ''5211.5 series'' in its place.

§ 724.501 [Amended]

11. Section 724.501 is amended as follows:

a. Removing paragraph (b), and redesignating paragraphs (c) through (p) as paragraphs (b) through (o) respectively; and

b. Newly redesignated paragraph (e) is amended by removing ''withdrawn'' and adding ''withdraw'' in its place.

§ 724.502 [Amended]

12. Section 724.502 is amended as follows:

a. Paragraph (c) is amended by removing ''Suite 905, 801 North Randolph Street, Arlington, VA 22203'' and adding ''720 Kennon Ave SE, Suite 309, Washington, DC 20374–5023'' in its place; and

b. Paragraph (d) is amended by removing ''696–4881'' and adding ''685–6600'' in its place.

§ 724.504 [Amended]

13. Section 724.504 is amended in paragraph (a) by adding ''if required'' after ''health record.''

14. Section 724.601 is revised to read as follows:

§ 724.601 General.

The NDRB is a component of the Secretary of the Navy Council of Review Boards and has its offices located in the NCR. The NDRB conducts documentary reviews and personal appearance reviews in the NCR. Hearings may be conducted outside the NCR at the NDRB's discretion contingent upon availability of resources and manpower.

15. Section 724.701 is amended as follows:

a. The introductory text is amended by removing ''Naval Council of Personnel Boards'' and adding ''Secretary of the Navy Council of Review Boards'' in its place; and

b. Paragraph (c) is revised to read as follows:

§ 724.701 Composition.

* * * * *

(c) Normally, at least three of the five members of the NDRB shall belong to the service from which the applicant whose case is under review was discharged.

* * * * *

16. Section 724.703 is revised to read as follows:

§ 724.703 Legal counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the Counsel assigned to the Office of the Director, Secretary of the Navy Council of Review Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Dated: June 23, 2009.

T.M. Cruz,

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

[FR Doc. E9–15463 Filed 6–29–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 080102007–81097–01]

RIN 0648–AW18

Magnuson-Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations

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

ACTION: Proposed rule, extension of comment period.

SUMMARY: NMFS extends the comment period for proposed regulations that address the operations and administration of regional fishery management councils (Councils).

DATES: Comments must be received by November 2, 2009.

ADDRESSES: You may submit comments, identified by ''RIN 0648–AW18,'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 301–713–1175.
- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910. Please mark the outside of the envelope ''Council Operations.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter n/a in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe pdf file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Sustainable Fisheries at the mailing address or fax number specified above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301–713–2337.

SUPPLEMENTARY INFORMATION: Section 302 of the Magnuson-Stevens Act includes provisions for the establishment and administration of the Councils. The Magnuson-Stevens Act was reauthorized on January 12, 2007, with amendments throughout, and this proposed rule would implement some of the changes that were made to Section 302. Additionally, several issues regarding Council operations and membership have prompted proposed changes to the regulations. Key aspects of this proposed rule are: requirements relative to the Council Coordinating Committee; requirements for Scientific and Statistical Committees (SSCs) and financial interest reporting for SSC members; an update of Council and committee meeting announcement

requirements; a requirement for Councils to have procedures for proposed regulations; designation of an alternate for the Indian tribal representative of the Pacific Fishery Management Council; requirements for nominating individuals to the Gulf of Mexico Fishery Management Council; revisions to the process and deadline for governors to submit Council member nominations to the Secretary; restrictions on direct or indirect lobbying by Council members, Council staff, and contractors; addition of lobbying and advocacy as types of financial interest activities that must be reported by affected individuals; and the requirement for new Council members to attend a training course. Additionally, this proposed rule would implement several minor changes in Magnuson-Stevens Act section 302, as well as a number of technical changes and minor corrections, unrelated to the reauthorization of the Act. Many of the key aspects of this proposed rule reiterate statutory requirements of the Magnuson-Stevens Act. NMFS is including this statutory text in regulations so that relevant Council process provisions both statutory and regulatory are presented together for ease of reference.

On March 27, 2009 (74 FR 13386), NMFS published this proposed rule with a comment period ending July 6, 2009. Because this proposed rule primarily affects the Councils, their input is critical in ensuring that questions regarding the requirements of this proposed rule are raised and responded to prior to a final rule being published. The original comment period allowed enough time for almost all Councils to have a meeting and discuss this proposed rule during the comment period. The Councils have now requested that the comment period be extended to allow all Councils to have two meetings during the comment period. NMFS agrees with this request and extends the comment period until November 2, 2009 to allow the Councils and the public adequate time to understand this proposed rule, discuss its effects on their circumstances, and provide their comments.

Dated: June 24, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–15466 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 080226312–9085–01]

RIN 0648–AW12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B; Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would, for South Atlantic snapper-grouper, require a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; require a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook (ELB) and/or video monitor provided by NMFS; prohibit the sale of snapper-grouper harvested or possessed in the EEZ under the bag limits and prohibit the sale of snapper-grouper harvested or possessed under the bag limits by vessels with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper regardless of where the snapper-grouper were harvested; require an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of such species that are incidentally caught; and expand the allowable transfer of a commercial vessel permit under the limited access program and extend the allowable period for renewal of such a permit. Amendment 15B also proposes to revise the stock status determination criteria for golden tilefish and specify commercial/recreational allocations for snowy grouper and red porgy. In addition, NMFS proposes to remove language specifying commercial quotas for snowy grouper that are no longer in effect and proposes to revise sea turtle bycatch mitigation requirements applicable to the Gulf reef fish fishery to add two devices that were inadvertently omitted from a prior rule. The intended effects of this rule are to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish; and remove outdated language.

DATES: Written comments on this proposed rule must be received no later than 5:00 p.m., eastern time, on August 4, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AW12, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 727–824–5308, Attn: Kate Michie
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 15B may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: *safmc@safmc.net*. Amendment 15B includes a Final Environmental Impact Statement (FEIS), an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter,

Southeast Regional Office, NMFS, and to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Kate.Michie@noaa.gov*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 15B

Monitor and Assess Bycatch

Current data collection methods do not adequately capture the true magnitude of bycatch in the fishery for South Atlantic snapper-grouper. An improved ability to monitor and assess bycatch in the fishery would provide better estimates of interactions with protected species and improve the quality of stock assessments so that management measures may be implemented in a timely manner to prevent stock collapse and/or speed recovery of overfished stocks.

Accordingly, this proposed rule would expand the existing requirement for fishing reports to include such private recreational vessels as are selected by the Science and Research Director, Southeast Fisheries Science Center, NMFS (SRD).

Similarly, this proposed rule would require an owner and operator of a vessel with a commercial vessel or charter vessel/headboat permit for South Atlantic snapper-grouper and an owner and operator of a private recreational vessel in that fishery, if selected by the SRD, to carry a NMFS-approved observer on trips selected by the SRD and/or participate in a NMFS-sponsored ELB or video monitoring reporting program as directed by the SRD.

To initiate an ELB or video monitoring program, NMFS would send a letter to an owner or operator of a selected vessel advising of his or her obligation to participate in the program. In cooperation with the owner or operator, NMFS staff or an authorized representative would meet at the selected vessel to install the NMFS-furnished ELB and/or video monitor on the vessel and to collect basic vessel and gear information that would later be correlated with the ELB or video monitoring information. Using the Global Positioning System, an ELB would automatically record vessel position information over time from which conclusions could be drawn regarding vessel activity, e.g., the vessel is fishing or transiting. At intervals determined by NMFS, the ELB memory unit or video monitor tape would be removed and provided to the SRD. The owner or operator could either mail the memory unit or tape to the SRD or arrange for a NMFS or state port agent to collect the unit or tape. The ELB program would supplement existing post-trip interview data and is intended to provide better estimates of the amount and location of effort occurring during a trip.

With an ELB, bycatch in the fishery would be estimated from a second sampling program based on observer data. NMFS would use total effort estimates based on best available scientific information to extrapolate observer-collected data into overall estimates of total finfish and invertebrate bycatch. A pilot program using ELBs started in 1999, with increasing coverage each year. The units have proved to be reliable and the data retrieved have provided substantial new information regarding the effort of the fishery in which it was used.

Video monitoring hardware and software could provide a cost-effective and reliable system of monitoring bycatch, release mortality, handling of fishes, and other shipboard practices. These systems have been shown to be useful in monitoring bycatch in other parts of the country. Pertinent data collected by a video electronic monitoring system would include species caught, number of hooks, location, depth, date, time, and disposition of released organisms. These data would provide information needed to help rebuild and maintain sustainable fisheries and determine what impact the fishery has on the survival of species. Data collected could be used to assess the fish species composition associated with the habitat affected by fishing gear, allowing for a better understanding of the ecosystem. Information would also be collected on protected resources encountered by fishing gear. The use of technology to record species, capture position, and disposition of released fishes has the potential to augment the collection of bycatch information and lessen the need for observers. Video technology could be used on vessels that cannot take a human observer for safety reasons or vessel limitations or other reasons. Previous experience indicates video monitoring is very effective for monitoring catches from longline gear due to the size and types of species collected. It is also substantially less expensive than observer coverage for comparable data collection.

These additional information sources combined with existing requirements would comprise part of the program to monitor and assess bycatch in the South Atlantic snapper-grouper fishery. NMFS would also rely on state cooperation, specifically funded projects, and the Atlantic Coastal Cooperative Statistics Program's Release, Discard and Protected Species Module, as that module is implemented.

Modification of the Sales Provisions

Current regulations allow the sale of snapper-grouper taken from the South Atlantic EEZ, up to the allowed bag limit, to be sold to a licensed dealer if the seller possesses a state-issued license to sell fish, whether or not the seller has a commercial vessel permit. Fish harvested and marketed in this manner, whether harvested by for-hire vessels or private anglers, are counted against the commercial quotas, resulting in accelerated quota closures and reducing the amount and value of harvests allocated to the commercial sector. Accelerated closures impose additional economic losses through market disruption and forced alteration of fishing practices, including transference of effort to other resources that may be less valuable and/or more expensive to catch. The effects of this situation are exacerbated by the current reduced commercial quotas. In addition, such fish are also counted against the recreational allocations, thus complicating fishery assessments. Accordingly, this rule would prohibit the sale of South Atlantic snapper-grouper harvested or possessed in the EEZ and possessed under the bag limits. This prohibition would apply not only to a person fishing from a private recreational vessel but also to a person fishing from a vessel operating as a charter vessel or headboat even if such charter vessel/headboat has a commercial vessel permit. In addition, this rule would prohibit the sale of snapper-grouper harvested or possessed under the bag limits by a vessel for which a Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of where the snapper-grouper were harvested, i.e., in state or Federal waters.

Sea Turtle and Smalltooth Sawfish Bycatch

NMFS concluded in a biological opinion that reasonable and prudent measures are necessary and appropriate to minimize the impacts on incidentally

caught threatened and endangered sea turtles and smalltooth sawfish taken in the South Atlantic snapper-grouper fishery. Therefore, measures are needed to comply with the biological opinion and to enhance the protection of threatened and endangered sea turtles and smalltooth sawfish.

This proposed rule would require a vessel for which a commercial or charter vessel/headboat permit has been issued for South Atlantic snapper-grouper and has any hook-and-line gear on board to possess a document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury;'' post the sea turtle handling and release guidelines provided by NMFS on the vessel; and, as specified in § 622.10(c) of this rule, have 12 types of sea turtle bycatch mitigation gear on board and follow specified release handling measures for a sea turtle or smalltooth sawfish that is caught incidentally.

Limited Access Permits for South Atlantic Snapper-Grouper

Currently, a transferable commercial vessel permit issued under the limited access program may be transferred only to an immediate family member of the holder. An ''immediate family member'' is specified as a husband, wife, son, daughter, brother, sister, mother, or father. This restriction has made it difficult for owners of individually owned vessels to change to corporate ownership and realize the associated benefits. Accordingly, the Council proposes and this rule would allow transfer to a corporation, provided the shareholders of the corporation are limited to the original permit holder at the time of the transfer and his or her immediate family members. Subsequent additional shareholders would be limited to immediate family members. These requirements would also apply to renewal of permits.

Currently, a limited access permit must be renewed not later than 60 days after its expiration. The Council finds that this limitation is overly burdensome and has limited management benefits. Accordingly this rule would extend the permit renewal period to one year.

Commercial/Recreational Allocations for Snowy Grouper and Red Porgy

The FMP currently does not specify commercial and recreational allocations for snowy grouper or red porgy. While commercial quotas are established for these species, lack of recreational allocations precludes specifications of allowable recreational catch and appropriate measures to prevent overfishing by that sector. Accordingly, the Council proposes to establish such commercial and recreational allocations.

For snowy grouper, the Council proposes allocations of 95 percent for commercial catch and 5 percent for recreational catch, which are based on the percentage of commercial and recreational landings during 1986–2005. Beginning in 2009, the commercial quota would be 82,900 lb (37,603 kg), gutted weight, and the recreational allocation would be 523 fish, which is the equivalent of 4,400 lb (1,996 kg), gutted weight.

For red porgy, the Council proposes allocations of 50 percent for commercial catch and 50 percent for recreational catch based on the percentage of commercial and recreational landings during 2001–2005. Beginning in 2009, the commercial quota would be 190,050 lb (86,205 kg), gutted weight, and the recreational allocation would be 190,050 lb (86,205 kg), gutted weight.

Accordingly, this rule would establish the commercial quotas indicated above. Approved recreational and commercial allocations would be considered legitimate measures of the FMP, but would not appear in codified text.

Stock Status Determination Criteria for Golden Tilefish

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils: (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing maximum sustainable yield (MSY). NMFS' national standard guidelines direct the councils to meet these statutory requirements by incorporating into each FMP estimates of certain biomass-based stock status determination criteria for each stock, including a designation of the stock biomass that will produce MSY. By evaluating the current stock biomass and fishing mortality rate in relation to these criteria, fishery managers can determine whether a fishery is overfished or undergoing overfishing, and whether current management measures are sufficient to prevent overfishing and achieve the optimum yield (OY).

The required criteria include MSY, OY, minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT). MSST is the biomass level below which a stock is considered overfished. MFMT is the maximum level of fishing mortality that a stock can withstand while still producing MSY on a continuing basis and above which overfishing is considered to be occurring.

In the past for snapper-grouper species, the Council has specified either numeric values, proxies, or nothing at all for the criteria described above. A recent stock assessment of golden tilefish has provided numerical values for MSY, OY, and MSST for that species. (Currently, MFMT is defined as the level of fishing mortality that will produce MSY and would remain unchanged.) The Council proposes the following changes based on the golden tilefish assessment:

	Current Value	Proposed Value
MSY	Not specified	336,425 lb (152.60 mt), whole weight
OY	Not specified	326,554 lb (148.12 mt), whole weight
MSST	1,783,650 lb (809.05 mt), whole weight	1,454,063 lb (659.55 mt), whole weight

Approved stock status criteria, as with the proposed recreational allocations for snowy grouper and red porgy, would be considered legitimate measures of the FMP, but would not appear in codified text.

Availability of Amendment 15B

Additional background and rationale for the measures discussed above are contained in Amendment 15B. The availability of Amendment 15B was announced in the **Federal Register** on June 4, 2009, (74 FR 26827). Written comments on Amendment 15B must be received by August 3, 2009. All comments received on Amendment 15B or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Additional Measures Proposed by NMFS

As general housekeeping changes, NMFS proposes to--(1) remove the outdated 2006 and 2007 commercial quotas and commercial trip limits for snowy grouper at § 622.42(e)(1) and § 622.44(c)(3), respectively; and (2) rearrange and consolidate the

restrictions on sale/purchase of South Atlantic snapper-grouper at § 622.45(d).

In addition, NMFS proposes to revise § 622.10(b)(1) to add two devices to the list of required sea turtle bycatch mitigation gear for commercial and charter vessel/headboats in the Gulf reef fish fishery that were inadvertently omitted in the final rule published August 9, 2006 (71 FR 45428). For vessels with a freeboard height of 4 ft (1.2 m) or less, a tire is added to the list. For vessels with a freeboard height of greater than 4 ft (1.2 m), a tire and a long-handled device to pull an ''inverted V'' in the fishing line are added to the list.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 15B, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an FEIS for Amendment 15B; a notice of availability was published on June 4, 2009, (74 FR 26827).

An IRFA was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

The purpose of this rule is to specify quotas for snowy grouper and red porgy; modify the sales provisions of snapper-grouper caught or possessed under the bag limit; implement a plan to monitor and assess bycatch; implement measures to minimize the impacts of incidental sea turtle and smalltooth sawfish take; and ease the requirements of snapper-grouper permit renewal and transfer. These measures are expected to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery, and minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish. The Magnuson-Stevens Act provides the statutory basis for the proposed rule. In addition to these actions, Amendment 15B established allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed action is expected to directly impact commercial fishers and for-hire operators. The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries).

From 2001–2005, an average of 1,127 vessels per year were permitted to operate in the commercial snapper-grouper fishery. However, over the 2004–2006 fishing years, an average of 717 vessels per year that were permitted to operate in the commercial snapper-grouper fishery recorded snapper-grouper sales. The average annual dockside value of snapper-grouper sold by these vessels was approximately $12.96 million (nominal dollars), while the value of all other species sold by these vessels was approximately $14.33 million (nominal dollars), or total average annual revenues of approximately $27.29 million. The average annual dockside revenue per vessel from sales of all marine species for this period was approximately $38,000.

In 2005, 1,328 vessels were permitted to operate in the Federal snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats, and 1246 are charter vessels. Within these 1,328 vessels, 201 vessels also possessed a commercial snapper-grouper permit and would be included in the summary information provided on the commercial sector. The charter vessels charge a fee on a vessel basis, and headboats charge a fee on an individual angler (head) basis. The charter vessel annual average gross revenue is estimated to range from approximately $62,000-$84,000 (2005 dollars) for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states. From 2004–2006, an average of 159 vessels per year with the for-hire snapper-grouper permit had recorded sales of snapper-grouper species. The total average annual revenues from snapper-grouper species were approximately $316,000 (nominal dollars), while average annual revenues for all other species was approximately $1.52 million (nominal dollars), for total average annual revenues from fish sales of approximately $1.84 million. The average annual revenue per for-hire vessel from fish sales of all marine species for this period was approximately $11,600. It should be noted that these revenues are not included in the average gross for-hire revenues listed above, which only reflect revenues from charter fees.

The proposed prohibition of bag-limit sales would affect vessels that have historically sold snapper-grouper but do not possess or fish under a Federal commercial snapper-grouper permit. From 2004–2006, an average of 1,439 fishing vessels per year that could not be associated with either a Federal commercial or Federal for-hire snapper-grouper permit had recorded snapper-grouper sales. Total average annual revenues from snapper-grouper species for these vessels were approximately $2.09 million (nominal dollars), while average revenues from all other species were approximately $28.59 million (nominal dollars), for total average annual revenues of approximately $30.67 million. The average annual revenue per vessel from sales of all marine species for this period was approximately $21,000.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown, and all vessels are treated as independent entities in this analysis. Based on the average revenue figures described above, it is determined, for the purpose of this assessment, that all fishing operations that would be affected by this action are small entities.

This action does not explicitly impose any new reporting, record-keeping or other compliance requirements because the action simply specifies the types of requirements that could be imposed to improve bycatch monitoring and assessment and any individual vessel would only be subject to any new requirements if selected. However, the proposed bycatch and monitoring assessment action could result in a requirement for the use of paper logbooks, electronic logbooks, or video cameras, or the carrying of observers to aid in the monitoring of bycatch. All commercial snapper-grouper trips are

currently required to complete logbook records, with each report estimated to take 10 minutes to complete. Over the years 2001–2005, commercial vessels operating in the snapper-grouper fishery took almost 16,000 trips, or approximately 14 trips per vessel. Assuming modification to the current logbook to include bycatch increased the time required to complete the form by 25 percent, then the additional annual time burden to complete the form fishery-wide would be approximately 667 hours or 0.6 hours per vessel.

The headboat sector is also currently required to complete logbook reports for all trips, estimated to take 18 minutes per report. Assuming an average of 322 trips per vessel (note that many vessels take multiple trips per day, so the average number of trips does not equal days fished), 82 headboats, and a 25–percent increase in the amount of time required to complete the form to account for bycatch, the resultant increased annual time burden to the industry would be approximately 1,980 hours, or 24 hours per vessel.

Although charter vessels currently are required to complete logbooks if selected, no vessels in the charter-vessel sector are currently selected and required to submit logbooks. Assuming it took a charter vessel the same amount of time required for a commercial vessel to complete a bycatch-augmented logbook, 12.5 minutes, 1,246 charter vessels and 146 trips per charter vessels per year, if all vessels were required to complete logbooks, the total annual time burden to the industry would be approximately 37,900 hours or 30.4 hours per vessel.

There would be no anticipated costs of logbook reporting beyond the opportunity cost of completing the logbook forms. Current logbook programs provide fishermen with addressed, pre-paid envelopes for returning completed forms. Completing the logbooks would not be expected to require special skills.

Similar burden estimates are not available for the use of electronic logbooks. Electronic logbooks would be expected to take less time to complete because certain response variables could be preprogrammed and transmission would be simplified. Logbooks are estimated to cost $500 per unit, but responsibility for this expense is undetermined at this time. Considering the widespread familiarity with and usage of computers throughout today's society, special skills to use an electronic logbook would not be expected, though some initial training or demonstration and a short learning curve would be logical.

The use of video cameras to monitor and record bycatch is likely a method that would, if used, be imposed on only a small portion of participants in the snapper-grouper fishery due to its cost and complexity. Purchase, installation, and maintenance costs of video systems would likely be borne by the government, though some cost-sharing with fishermen may occur. Additional details are unavailable at this time, so concrete determinations on fishermen burden or skill requirements cannot be made.

The proposed rule would be expected to directly affect all vessels that operate in the commercial snapper-grouper fishery, all vessels that have a Federal snapper-grouper for-hire permit, and all vessels that harvest snapper-grouper from the EEZ and sell their catch to federally permitted dealers. All affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the proposed action would affect a substantial number of small entities. Since all entities that would be expected to be affected by the proposed rule are considered small entities, no disproportionate effects on small entities relative to large entities would be expected.

Only four of the proposed actions, the two proposed changes in quota, the proposed prohibition on bag-limit sales, and the proposed gear requirements to minimize the incidental take of sea turtles and smalltooth sawfish, are expected to have direct economic impacts on fishing entities. The proposed snowy grouper quota of 82,900 lb (37,603 kg) gutted weight would result in a loss of 1,100 lb (499 kg) of snowy grouper to the commercial sector. Assuming an average ex-vessel price of $2.31 per pound (2006 dollars), this reduction would be valued at approximately $2,500, or a loss of approximately $13 per vessel active in the fishery (190 vessels; 2001–2005 average number of commercial vessels per year with snowy grouper landings). The proposed red porgy quota of 190,050 lbs (86,205 kg) gutted weight would result in a gain of 63,050 lb (28,599 kg) gutted weight of red porgy to the commercial sector. This gain is comprised of approximately 59,000 lbs (26,762 kg) gutted weight resulting from the increase in red porgy TAC as a result of the rebuilding strategy implemented through Amendment 15A and the remaining increase resulting from a one percent increase in the commercial allocation established by Amendment 15B. Assuming an average ex-vessel price of $1.40 per pound (2006 dollars), the total gain in commercial quota would be valued at approximately $88,300, or a gain of approximately $493 per vessel active in the fishery (179 vessels; 2001–2005 average number of commercial vessels per year with red porgy landings).

Assuming the implementation of compatible regulations in all states, thus encompassing snapper-grouper harvested in both state and Federal waters as well as marketed through all state and federally permitted dealers, the proposed elimination of bag-limit sales is projected to result in the transfer of approximately $2.4 million in nominal ex-vessel revenues (2004–2006 average) from for-hire and commercial fishing vessels that do not have a Federal commercial snapper-grouper permit to the federally permitted commercial snapper-grouper sector. This would constitute a total reduction of approximately $316,000 per year for fish sales by vessels in the federally permitted for-hire fishery, or a 17–percent reduction in average annual gross revenues from fish sales per vessel, and approximately $2.085 million per year in sales for commercial vessels that do not posses a Federal commercial snapper-grouper permit, or a 7–percent reduction in average annual gross revenues per vessel. It should be noted that snapper-grouper fish sales by federally permitted for-hire vessels, estimated at approximately $2,000 per vessel on average, constitute a minor portion of total average annual revenues, with the majority of revenues coming from charter fees. As discussed above, South Atlantic charter vessels are estimated to have average gross annual revenues of approximately $32,000-$89,000, across all states, while headboat average annual revenues are estimated to range from $149,000-$362,000.

If compatible regulations are not adopted in any state, the estimated reduction in bag-limit sales revenues would be limited to those harvests that originate from the EEZ by all vessels, bag limit harvests from state waters by vessels with the Federal charter vessel/headboat permit for South Atlantic snapper-grouper, and harvests that are marketed through dealers with a Federal permit. This would lower the reduction in bag-limit sales to approximately $1.562-$1.799 million, accounting for the estimated portion of bag-limit sales that originate in state waters (approximately 9 percent) and the estimated portion of bag-limit sales that are marketed through dealers without Federal licenses (approximately 21–35 percent). For the Federal for-hire sector,

using the average EEZ bag-limit sales (approximately $267,000) and dealer proportions (approximately 11 percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 34 percent otherwise), the reduction in bag limit sales would be approximately $175,000-$238,000. For the non-Federal sector, using the average EEZ bag-limit sales (approximately $1.921 million) and dealer proportions (approximately 23 percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 35 percent otherwise), the reduction would be approximately $1.246 million to $1.483 million. These values equate to approximately a 10–13 percent reduction in average annual for-hire fish-sales revenues ($175,000-$238,000/159 vessels/$11,568 total average annual revenues) and approximately a 4–5 percent reduction in average annual revenues to non-federally permitted vessels ($1.246-$1.483 million/1,439 vessels/$21,317 total average revenues).

The transference of these revenues to the Federal commercial snapper-grouper sector would result in an estimated increase of approximately 9 percent in nominal ex-vessel revenues per year ($2.4 million/717 vessels/$38,000 average annual revenues) if compatible regulations are adopted by all states, and from 5 percent to 6 percent if no states adopt compatible regulations ($1.422-$1.729 million/717 vessels/$38,000 average annual revenues).

The proposed gear requirements to minimize the incidental take impact on sea turtles and smalltooth sawfish are estimated to increase vessel gear costs by $617-$1,115, based on low and high estimated costs, respectively, for each of the 12 different pieces of required gear and assuming the vessel does not already possess any of the required gear. Few actual vessels would be expected to have to incur the maximum cost, however, since most vessels are expected to already possess and use most of this gear or allowable substitutes. For-hire vessels that exclusively harvest fish through snorkeling or diving activities and do not possess hook-and-line gear on-board would not have to carry the required gear. For those vessels that needed to carry the gear, any costs would be one-time expenditures, subject to breakage or loss replacement.

Three alternatives, including the status quo, were considered for the action to address the sale of snapper-grouper harvested under the bag limit. The proposed rule would prohibit the purchase and sale of bag-limit fish harvested from or possessed in the EEZ by vessels that did not possess the Federal commercial snapper-grouper permit, and bag-limit fish harvested in either state or EEZ waters by vessels that possess the Federal charter vessel/headboat permit for South Atlantic snapper-grouper. The first alternative, the status quo, would continue to allow the sale of snapper-grouper harvested under the bag limit, continue to allow the Federal commercial snapper-grouper quota to be harvested and sold by vessels that did not possess the Federal commercial snapper-grouper permit, continue increased commercial quota pressure and accelerated quota closures, result in continued adverse economic effects on the Federal commercial snapper-grouper sector, and not achieve the Council's objectives.

The second alternative to the proposed prohibition of sales of snapper-grouper harvested under the bag limit would allow continued sales by vessels with a Federal for-hire snapper-grouper permit. While this would reduce the adverse economic effects on the Federal commercial snapper-grouper sector associated with the status quo, these effects would not be eliminated, thereby generating less net economic benefits for this sector and associated businesses than the proposed action.

Four alternatives, including the status quo, were considered for the action to establish a program to monitor and assess bycatch. The proposed rule would require the use of a variety of bycatch monitoring methods, which include observers and use of an ELB or video monitoring program, until the Atlantic Coastal Cooperative Statistics Program (ACCSP) bycatch monitoring program can be implemented. The first alternative to the proposed program, the status quo, would only utilize existing information, would not improve current capabilities to monitor and assess bycatch, and would not achieve the Council's objectives. The second alternative to the proposed bycatch monitoring and assessment program would require the implementation of the ACCSP bycatch monitoring program. The ACCSP is a cooperative state-federal program whose mission is to design, implement, and conduct marine fisheries statistics data collection programs and to integrate those data into a single data management system that will meet the needs of fishery managers, scientists, and fishermen. The ACCSP design includes data modules for catch and effort data, permit and vessel registration, biological data, bycatch data, quota monitoring data, economic data, and sociological data. These modules are being implemented on a priority basis consistent with available funding. At this time, funding is not available for implementation of the bycatch data module. While this program would generate the best data in the shortest period of time, with accompanying social and economic benefits, the program lacks the flexibility of allowing interim methods until such time as the preferred methods can be funded and adopted. As a result, this alternative would not meet the Council's objectives. The overall cost to implement the ACCSP bycatch monitoring program has not been identified.

The third alternative to the proposed bycatch monitoring and assessment program would implement a program that is less comprehensive than the proposed program. This program would require a variety of reporting and monitoring tools, including observers, logbooks, and video monitoring, among other methods, but would be less structured and systematic than the ACCSP program or the proposed program. The cost of this program is unknown. As a result of being less structured and systematic, however, this program would be expected to be less costly than the proposed program, but would also be expected to result in poorer data and generate fewer long-term benefits than the proposed program.

Three alternatives, including the status quo, were considered for the action to establish sea turtle and smalltooth sawfish take impact minimization measures. The proposed rule would require a number of impact minimization measures, including the carrying of release equipment. The first alternative to the proposed equipment requirements, the status quo, would not achieve the desired take-impact minimization and would not meet the Council's objectives.

The second alternative to the proposed equipment requirements would require the acquisition of less costly equipment (vessels with less than four feet of freeboard would be required to carry less release gear and vessels with more than four feet of freeboard would have more gear substitution options). However, these requirements would not be expected to result in the same reduction in bycatch impact minimization for these species and, as a result, would not be expected to result in as much protection for the species and net economic and social benefits for society.

Three alternatives, including the status quo, were considered for the action to establish the permit renewal period. The proposed rule would allow

1 year after permit expiration for permit renewal. The first alternative to the proposed renewal period, the status quo, would retain the current 60-day renewal requirement and would not achieve the Council's objective of increasing permit renewal flexibility.

The second alternative to the proposed renewal period would allow 6 months after permit expiration for permit renewal. While this would add greater flexibility for permit renewal relative to the status quo, thereby reducing the likelihood of unintended permit loss and associated economic losses, this alternative would not be consistent with the permit renewal period of most other permits and would not be as flexible as the proposed action. Having common renewal periods makes it possible to renew all permits at the same time, decreases the burden associated with permit renewal, and decreases the possibility of unintended permit loss due to non-renewal.

Seven alternatives, including the status quo, were considered for the action to establish options for transfer provisions for permits owned by corporations comprised of family members. The proposed rule would allow the transfer of the permit to a corporation comprised solely of immediate family members. Five of the alternatives are variations of the proposed action and vary by differences in required action if the proposed requirement for the submission of the annual corporate report includes shareholders not listed on the original permit application. The first alternative to the proposed transferability option, the status quo, would continue to require a two-for-one permit exchange in order for a permit holder to incorporate their business operation and change the ownership of the permit to the corporation. Current permit holders would be prevented from receiving the tax and other financial benefits of incorporation without incurring the added expense of purchasing a second snapper-grouper permit. Because this restriction was outside the scope of the Council's original intent for the two-for-one permit transfer requirement, maintaining the status quo would not achieve the Council's objectives.

The second alternative to the proposed permit transferability option would treat the addition of family members as corporate shareholders the same as non-family members. Thus, once a permit is transferred to a corporation, renewal of the permit would not be restricted by change in shareholders. This alternative would allow the most liberal transfer flexibility but would not preserve the Council's intent to promote family-owned fishing businesses.

The third alternative to the proposed permit transferability option would not allow a permit to be renewed and transferred if the annual corporate report showed a shareholder not listed on the original corporate documentation. This alternative would be the most restrictive of the sub-set of alternatives that allow family incorporation. Because this alternative would eliminate the flexibility to change corporate shareholders even among family members, this alternative would result in less economic benefits than the proposed action.

The fourth alternative to the proposed permit transferability option would require a two-for-one transfer if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would increase the cost of transfer because of the cost of a second permit, estimated to cost between $9,000 and $21,000, and generate less net economic benefits than the proposed action.

The fifth alternative to the proposed permit transferability option would require either a two-for-one transfer or a transfer back to person who is an immediate family member of the permit holder who originally transferred the permit to the family corporation if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would either increase the cost of transfer or eliminate the tax and financial benefits of incorporation and, thus, generate less net economic benefits than the proposed action.

The sixth alternative to the proposed permit transferability option would eliminate the two-for-one permit transfer requirement. Permit holders would be able to transfer their permit to corporations, family owned or otherwise, and freely change shareholders without incurring the cost of obtaining an additional permit. While this would create the most flexible transfer conditions, it would eliminate the ability to reduce the size of the commercial snapper-grouper fleet through permit renewal requirements. While the optimal fleet size to maximize social and economic benefits to the nation has not been identified, the fishery is believed by the Council to still be overcapitalized and further contraction is necessary. Thus, this alternative would generate less net economic benefits than the proposed action.

In addition to the actions discussed above, Amendment 15B considered alternatives to establish allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish. These alternatives are discussed in the following paragraphs.

Four alternatives, including the status quo, were considered for the action to set the snowy grouper allocation, which was necessary to establish the commercial quota and recreational allocation. The proposed action would set the allocation to the recreational sector equal to 5 percent, resulting in a commercial allocation of 95 percent and a recreational allocation of 5 percent. The first alternative to the proposed action, the status quo, would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the proposed snowy grouper allocation would set the recreational allocation to 7 percent, while the third alternative would set the recreational allocation to 12 percent. Both alternatives would be expected to increase the economic benefits to the recreational sector while reducing the economic benefits to the commercial sector. Net economic benefits to the nation cannot be determined with available data. These alternatives were not selected as the proposed snowy grouper allocation because they were derived from shorter time periods than the proposed action, 1992–2005 and just 2005, respectively, compared to 1986–2005 for the proposed action, resulting in excessive influence of unrealistic spikes in recreational landings.

Four alternatives, including the status quo, were considered for the action to set the red porgy allocation. The proposed action would set both the commercial and recreational allocations equal at 50 percent. The status quo would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the proposed red porgy allocation would set the recreational sector allocation to 32 percent, while the third alternative would set the recreational allocation to 56 percent. Each sector would be expected to receive increased or decreased economic benefits relative to the status quo as their allocation increased or decreased. Net benefits to the nation under any alternative cannot be quantified with available data. Neither of these alternatives were

selected as the preferred action since each would involve substantial changes from what the Council believes, based on advisory panel comment, is the most equitable allocation which is the average sector harvest from 1999–2003, or 49 percent commercial and 51 percent recreational. The proposed action varies from this allocation by only one percentage point, allocating 50 percent of the TAC to each sector. While not precisely matching the average 1999–2003 harvest, the Council believes that the proposed allocation equitably accounts for the increased value of red porgy to the recreational sector while reversing declines in commercial harvests due to previous regulatory action.

Two alternatives, including the status quo, were considered for the action to specify MSY for golden tilefish. The proposed MSY is approximately 336,000 lb (152,407 kg) whole weight. The first alternative to the proposed MSY, the status quo, is likely an overestimate since the associated yield is approximately 736,000 lb (333,844 kg) whole weight and a harvest level this high has not been recorded since 1995, suggesting that the MSY is inappropriate for this resource. Allowing harvest at this level may lead to excessive exploitation, precipitating the imposition of restrictive management measures and reductions in economic and social benefits relative to the proposed action.

Four alternatives, including the status quo, were considered for the action to specify OY for golden tilefish. The proposed OY is estimated at approximately 327,000 lb (148,325 kg) whole weight. Similar to the status quo MSY, the first alternative to the proposed OY, the status quo, is likely an overestimate and inappropriate for this resource since it is estimated at approximately 364,000 lb (165,108 kg) whole weight, which is greater than the proposed MSY. The second and third alternatives would establish OYs of approximately 315,000 lb (142,882 kg) whole weight and approximately 333,000 lb (151,046 kg) whole weight, respectively and are, respectively, more and less conservative than the proposed action. The second alternative to the proposed OY is believed to be more conservative than necessary to protect the resource and would be expected to result in greater foregone economic benefits than the proposed action. Conversely, the third alternative to the proposed OY is believed to be insufficiently conservative to protect the resource. The proposed OY is believed to be the appropriate choice to minimize foregone economic benefits while protecting the resource.

Three alternatives, including the status quo, were considered for the action to specify the MSST for golden tilefish. The proposed MSST would establish a value of approximately 1.454 million lb (0.660 million kg) whole weight. The first alternative to the proposed MSST, the status quo, would establish an MSST of approximately 1.784 million lb (0.809 million kg) whole weight, would require the largest minimum stock size, and would increase the likelihood that the resource be declared overfished, necessitating harvest reductions and imposing short term adverse economic impacts. The second alternative to the proposed MSST would require the smallest minimum stock size of approximately 969,000 lb (439,531 kg) whole weight. While this specification would minimize, among the three alternatives, the likelihood of the stock being declared overfished, this stock level is believed to be insufficiently conservative to provide adequate protection to the resource. The proposed MSST specifies a minimum stock size intermediate to the other alternatives and is believed to be the appropriate choice to minimize the likelihood of triggering restrictive management while protecting the resource.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA applicable to vessels in the South Atlantic snapper-grouper fishery--namely, requirements for: (1) submission of logbooks by private recreational vessels; (2) notification of vessel trips related to vessel observers; (3) preparation of vessel and gear characterization forms for vessels selected to participate in the ELB and video monitoring program; (4) installation of ELBs and data downloads; (5) installation of video monitors and data downloads; and (6) change of ownership of a vessel with a transferable commercial vessel permit.

These requirements have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated to average--(1) 10 minutes for each logbook submission, (2) 4 minutes for each notification of a vessel trip, (3) 20 minutes for each vessel and gear characterization form, (4) 31 minutes for each ELB installation and data download, (5) 8 hours for each video monitor installation and data download, and (6) 20 minutes for each change of ownership. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 24, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definition of ''Smalltooth sawfish'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Smalltooth sawfish means the species *Pristis pectinata*, or a part thereof.

* * * * *

3. In § 622.5, paragraphs (a)(1)(iv), (b)(1), and (b)(2) are revised and paragraph (g) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(iv) *South Atlantic snapper-grouper*—(A) *General reporting requirements*. The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) *Electronic logbook/video monitoring reporting*. The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iv)(B) is required for permit renewal.

(C) *Wreckfish reporting*. The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must--

(*1*) Maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(*2*) Make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

* * * * *

(b) * * *

(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo*—(i) *General reporting requirement*. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) *Electronic logbook/video monitoring reporting*. The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (b)(1)(ii) is required for permit renewal.

(2) *Reporting deadlines*—(i) *Charter vessels*. Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats*. Completed fishing records required by paragraph (b)(1)(i) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(g) *Private recreational vessels in the South Atlantic snapper-grouper fishery*. The owner or operator of a vessel that fishes for or lands South Atlantic snapper-grouper in or from the South Atlantic EEZ who is selected to report by the SRD must—

(1) Maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed fishing records must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(2) Participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD.

4. In § 622.7, paragraph (d) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5.

* * * * *

5. In § 622.8, paragraph (a)(6) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(6) *South Atlantic snapper-grouper*. (i) A vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(6)(i).

(ii) Any other vessel that fishes for South Atlantic snapper-grouper in the South Atlantic EEZ must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

* * * * *

6. In § 622.10, paragraph (b)(1) is revised and paragraph (c) is added to read as follows:

§ 622.10 Conservation measures for protected resources.

* * * * *

(b) * * *

(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in §§ 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, tire, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in §§ 635.21(c)(5)(i)(E) through (L) of this chapter with the following modifications: the dipnet handle can be of variable length, only one NMFS-approved short-handled dehooker is required (i.e.,

§ 635.21(c)(5)(i)(G) or (H) of this chapter); and life rings, seat cushions, life jackets, and life vests or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, tire, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C)) of this chapter and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, and life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

* * * * *

(c) *South Atlantic snapper-grouper commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, and whose vessel has on board any hook-and-line gear, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) The required gear must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C) of this chapter) and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

(2) *Smalltooth sawfish conservation measures*. The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except with a long-handled dehooker.

§ 622.15 [Amended]

7. In § 622.15, in paragraphs (c)(4)(iii) and (c)(5) remove cross references to ''§ 622.5(a)(1)(iv)(B)'' and add in its place the cross reference ''§ 622.5(a)(1)(iv)(C)(*1*)''.

8. In § 622.18, paragraphs (b)(1)(ii) and (c) are revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(b) * * *

(1) * * *

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit—

(A) From one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father; or

(B) From an individual to a corporation whose shares are all held by the individual or by the individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father. The application for transfer of a permit under this paragraph (b)(1)(ii)(B) and each application for renewal of such permit must be accompanied by a current annual report of the corporation that specifies all shareholders of the corporation. A permit will not be renewed if the annual report shows a new shareholder other than a husband, wife, son, daughter, brother, sister, mother, or father.

* * * * *

(c) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

9. In § 622.42, paragraphs (e)(1) and (e)(6) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(1) *Snowy grouper*. (i) For the fishing year that commences January 1, 2008—84,000 lb (38,102 kg).

(ii) For the fishing year that commences January 1, 2009, and for subsequent fishing years—82,900 lb (37,603 kg).

* * * * *

(6) *Red porgy*. (i) For the fishing year that commences January 1, 2008—127,000 lb (57,606 kg).

(ii) For the fishing year that commences January 1, 2009, and for subsequent fishing years–190,050 lb (86,205 kg).

* * * * *

10. In § 622.44, paragraph (c)(3) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(3) *Snowy grouper*. (i) Until the quota specified in § 622.42(e)(1) is reached—100 lb (45 kg).

(ii) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

* * * * *

11. In § 622.45, paragraph (d) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) *South Atlantic snapper-grouper*. (1) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or a South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.39(d), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, i.e., in state or Federal waters.

(2) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(3) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) No person may sell or purchase a snowy grouper, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic, i.e., in state or Federal waters, by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(6) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(7) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(9) The documentation supporting a dealer's purchase or sale of applicable species during the times specified in paragraphs (d)(6) through (d)(8) of this section must contain:

(i) The information specified in part 300, subpart K, of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the applicable species;

(iii) The port and date of offloading from the vessel harvesting the applicable species; and

(iv) A statement signed by the dealer attesting that the applicable species was harvested from an area other than the South Atlantic.

* * * * *

[FR Doc. E9–15465 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 124

Tuesday, June 30, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 25, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Stakeholder/Customer Satisfaction Survey.

OMB Control Number: 0579–NEW.

Summary of Collection: In 2003, the Plant Health Program (PHP) unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), obtained from the International Organization of Standardization (ISO, nongovernmental worldwide network of national standards institutes) certification in the ISO 9001;2008 standard for its permit services. To meet the ISO 9001;2008 standards, an organization must demonstrate its ability to consistently provide a product that meets customer quality requirements and applicable regulatory requirements, while aiming to enhance customer satisfaction through effective application of the system, including processes for continual improvement of its performance. In order to remain in compliance with Clause 8.2.1 (Customer Satisfaction) of the ISO 9001;2008 standard, PHP must measure the performance of its quality management system by monitoring information related to customer perception in relationship to customer requirements. PHP has determined that the best method for obtaining this information is through the use of stakeholder/customer satisfaction surveys.

Need and Use of the Information: PHP will collect information from the survey to solicit stakeholder and customer feedback with regards to their satisfaction with the regulatory services of Permit Services, Pest Permit Evaluations, and National Identification Services, which is a compliance requirement of the ISO 9001;2008 standard. Without the information it would seriously affect APHIS' ability to remain in compliance with the ISO 9001;2008 international standards.

Description of Respondents: Business or other for-profit.

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–15423 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on July 9, 2009, to discuss the future of sustainable recreation on the Deschutes National Forest. The meeting will start at 8:30 a.m. at the Forest Supervisor's Office, 1001 SW. Emkay Drive, Bend, Oregon in the Upper Deschutes Conference Room. Members will be updated on the winter Recreation Sustainability Analysis. An Open Public Forum is scheduled from 9:40–10 a.m. Then, members will go to the field at 10 a.m. to key recreation sites on the forest to discuss future desired recreation opportunities in preparation for the upcoming Forest Plan Revision. The trip is scheduled to end at 4 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Crescent Ranger District, Highway 97, Crescent, Oregon 97733, Phone (541) 433–3216.

Mary Farnsworth,

Deputy Deschutes National Forest Supervisor.

[FR Doc. E9–15247 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-

Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday, July 16, 2009, from 5 p.m. until 9 p.m., in Deer Lodge, Montana. The purpose of the meeting is to review funding proposals for Title II funding.

DATES: Thursday, July 16, 2009, from 5 p.m. until 9 p.m.

ADDRESSES: The meeting will be held at the USDA building located 1002 Hollenback Road, Deer Lodge, Montana (MT 59722).

FOR FURTHER INFORMATION CONTACT: Patty Bates, Committee Coordinator, Beaverhead-Deerlodge National Forest, 420 Barrett Road, Dillon, MT 59725 (406) 683–3979; e-mail *pbates@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda for this meeting include discussion about new project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 23, 2009.

Tammy Clark,

Acting Designated Federal Official.

[FR Doc. E9–15444 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Presentations for FY08 and FY09, (5) Project Voting by RAC Members, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on July 27, 2009, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, Designated Federal Official, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Matt Ellis, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–3316; E-mail *matthewellis@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by July 20, 2009 have the opportunity to address the committee at those sessions.

Dated: June 23, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–15245 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Umpqua National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Sites.

SUMMARY: The Umpqua National Forest is proposing to charge fees at six recreation sites that currently do not charge fees: Ash Flat Forest Camp and Three C Rock campgrounds and the South Umpqua Day Use Area on the Tiller Ranger District; Rujada Group Picnic Site and East Brice Creek/Champion Creek Trailhead on the Cottage Grove Ranger District; and Thielsen View Boat Launch on the Diamond Lake Ranger District. These sites currently meet, or can easily meet, the criteria of an Expanded or Standard Amenity fee. These sites have recently been reconstructed, have added or are scheduled to add amenities to improve services and experiences. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. The fees listed are only proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

Ash Flat Camp is an existing campground that, with the addition of garbage collection, will have seven of the nine amenities (toilet, tables, access, fire ring, fee collection, tent sites, and reasonable visitor protection) of an Expanded Amenity site. Three C Rock was originally a picnic area, but a recently added five-unit campground adjacent to the picnic area now qualifies the site as an Expanded Amenity Site. Garbage service would also be provided at both sites. A financial analysis determined the use fees for these two sites may range between $6.00 and $14.00 per camp unit per night. An additional $3.00 to $5.00 may be charged for each additional vehicle per night.

South Umpqua Day Use Area has all six Standard Amenity improvements including a permanent toilet, garbage receptacle, parking, interpretive signs, picnic tables, and security. Additional facilities include barbeques and an observation deck. A fee vault would be added so recreation users could pay the fee on-site. The fee area would include parking along Road 28 within the designated area. People who park at these turnouts use the Day Use Area and its amenities. Financial analyses based on level of amenities suggest a day use fee of $1.00 to $5.00 per vehicle per day. The site is proposed to become a fee site where the Northwest Forest Pass ($5.00 per day or $30 for an annual pass) or other applicable passes would be accepted.

Rujada Picnic Site is currently a free, day-use area with both group and individual picnic sites and a trailhead recreation site that is frequented by single families as well as large groups. The site provides all six of the Standard Amenity improvements including garbage collection, toilets, tables, parking, interpretive sign, and security as well as recent improvements including the installation of a new potable water line and faucets, and a play ground next to a large open area with horseshoes pits. Based on the level of amenities and the type of use occurring at this site, a Group Day Use reservation and fee is being proposed. There are 2 adjacent Group Use Sites, each with a maximum capacity of 20 to 30 people per site, or 40 to 65 for both sites. Each site will be available to reserve through the Recreation.gov reservation system. Rates being proposed are $25 per day for one site or $50 for both sites. These fees would be required only during the managed season of Memorial Day weekend through Labor Day weekend.

East Brice Trailhead, also known as Champion Creek Trailhead, is currently not a fee site. It is used for parking and access to the adjacent Noonday OHV trail system and 3 adjacent hiker/mountain bike trails. The site provides five of the six Standard Amenity improvements including a permanent

toilet, garbage receptacle, parking, interpretive sign, security, and if implemented, the sixth amenity, a picnic table, will be added as well as a fee vault. Financial analyses based on level of amenities suggest a day-use fee of $5.00 per vehicle per day. This site is proposed to become a fee site where the Northwest Forest Pass ($5.00 per day or $30 for an annual pass) or other applicable passes would be accepted. Fees would be required only during the managed season of Memorial Day weekend through October.

Thielsen View Boat Launch, is located within the Thielsen View Campground and is currently not a fee site. It is one of three highly developed boat launches on Diamond Lake. A $5.00 per vehicle/boat trailer per day fee is already charged at the other two boat launches. Improvements and amenities at the boat launch include the double-lane paved ramp, paved parking, mooring dock, toilet, garbage bins, and picnic tables. Financial analyses based on level of amenities suggest a fee of $5.00 or more per vehicle/boat trailer per day. This site is proposed to become a fee site where the Northwest Forest Pass ($5.00 per day or $30 for an annual pass) or other applicable passes would be accepted. Persons already paying overnight camping or lodging fees at other sites on Diamond Lake would not be required to pay a day-use boat launch fee.

DATES: New fees would begin after May 2010 and contingent upon approval of the Recreation Resource Advisory Board. Comments concerning this notice should be received by July 31, 2009.

ADDRESSES: Send written comments to: Bill Blackwell, Umpqua National Forest, 2900 NW. Stewart Parkway, Roseburg, OR 97471. Comments may also be sent via e-mail to: *commentspacificnorthwest-umpqua@fs fed. us,* or via facsimile to 541–957–3495. Comments may be hand-delivered to the above address Monday through Friday, from 8 a.m. till 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bill Blackwell, Assistant Forest Recreation Staff Officer, 541–957–3349. Information about proposed fee changes can also be found on the Umpqua National Forest Web site: *http://www.fs.fed.us/r6/umpqua/recreation/index.html.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: June 16, 2009.

Clifford J. Dils,

Forest Supervisor.

[FR Doc. E9–15370 Filed 6–29–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results for the Administrative Review

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

SUMMARY: On June 5, 2000, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China (''PRC''). The Department is conducting an administrative review of this *Order,* covering the period of review (''POR'') of June 1, 2007, through May 31, 2008. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION:

General Background

On June 5, 2000, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 65 FR 35606 (June 5, 2000) (''*Order*''). On July 30, 2008, the Department published a notice of initiation of an administrative review of certain non-frozen apple juice concentrate from the People's Republic of China covering the period June 1, 2007, through May 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

On August 15, 2008, the Department issued original questionnaires to Itochu Corporation and its wholly-owned subsidiaries, Yitian Juice (Shaanxi) Co., Ltd. and Laiyang Yitian Co., Ltd., (collectively ''Itochu''). Between September 2008 and March 2009, Itochu submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

Extension of Time Limits

On February 5, 2009, the Department extended the deadline for the preliminary results of this review by 120 days, to June 30, 2009. *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Administrative Review*, 74 FR 6139 (February 5, 2009) (''*Extension*'').

Surrogate Country and Surrogate Values

On January 16, 2009, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (''FOP''). On February 24, 2009, the Itochu submitted surrogate country comments. On March 16, 2009, Itochu submitted surrogate value data. No other party is active in this review.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and FOPs for Itochu between April 6–10, 2009. *See* Memorandum to the File from Alexis Polovina, Case Analyst through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of Itochu Corporation and its Affiliate Yitian Juice (Shaanxi) Co., Ltd. (''Shaanxi Yitian'') in the Antidumping Administrative Review of Non-Frozen Apple Juice Concentrate, dated May 5, 2009 (''Shaanxi Yitian Verification Report'').

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate. Apple juice concentrate is defined as all non-frozen concentrated

apple juice with a brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''Act''), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC apple juice concentrate industry is a market-oriented industry. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determinations

In its questionnaire responses, Yitian Juice (Shaanxi) Co., Ltd. and Laiyang Yitian Co., Ltd., reported that they are wholly foreign-owned by Itochu Corporation, which is located in Japan. Therefore, because there is no PRC ownership of Itochu and we have no evidence indicating that they are under the control of the PRC, a separate rate analysis is not necessary to determine whether this company is independent from government control. *See Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, we reviewed all U.S. sales of subject merchandise made by Itochu during the POR and calculated a dumping margin which is assigned to Itochu Corporation.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, the Philippines, Indonesia, Columbia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[1] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''Surrogate Country Policy Bulletin'').

Absent world apple juice concentrate production data, the Department considered whether any country listed in the Surrogate Country List was a net-exporter (*i.e.*, exports more apple juice concentrate than it imports) to identify producers of apple juice concentrate. *See* Itochu's Surrogate Country Comments, dated February 24, 2009. We found that none of the countries listed in the Surrogate Country List were net-exporters of apple juice concentrate. *See* Memorandum from Alexis Polovina to the File: Analysis of the Preliminary Results of the Administrative Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China (''PRC''): Itochu Corporation, dated June 23, 2009, at Attachment I. Therefore, the Department considered other countries not listed in the Surrogate Country List and determined that Poland was a net-exporter of apple juice concentrate.

The record also contains surrogate value information from Poland for most inputs, including juice apples, the main input for producing apple juice concentrate. In addition, we have surrogate financial ratios from Polish juice companies. Therefore, for these preliminary results, we have selected Poland as the surrogate country because there are no comparable economies in which juice apples are produced. Of the countries that are significant producers of identical merchandise, the record contains reliable surrogate value information from Poland.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

U.S. Price

A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price (EP) for sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States.

We calculated EP based on the price to the unaffiliated purchaser. In accordance with section 772(c) of the Act, we deducted from this price, where appropriate, amounts for international freight, other U.S. transportation expenses, and U.S. customs duties (including merchandise processing and harbor maintenance fees). We selected Poland as the surrogate country for the reasons explained above in the ''*Surrogate Country*'' section. However, where we were unable to find Polish data to value particular FOPs, we valued these inputs using public information on the record from India. We valued the deductions for foreign inland freight using Indian freight costs. Where, as here, a significant portion or all of a specific company's ocean freight was provided directly by a market-economy company and paid for in a market-economy currency, we used the reported market-economy ocean freight values for all United States sales made by that company. *See* 19 CFR 351.408(c)(1) (regulation for the information used to value factors of production).

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP

[1] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate (''NFAJC'') from the People's Republic of China (''PRC''), dated January 15, 2009 (''Surrogate Country List'').

methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

During the verification of Itochu, it became apparent that Itochu had to produce more subject merchandise than it had agreed to sell to the United States customer due to production equipment requirements. *See* Shaanxi Yitian Verification Report at 5–6. Moreover, in Itochu's Second Supplemental Response, Itochu explained that the differences between the quantity sold and the quantity produced were taken into account. Itochu also stated that unique costs associated with out-of-season production and packaging were incorporated into the final price. *See* Itochu's Response to Second Supplemental Questionnaire: Non-Frozen Apple Juice Concentrate from the People's Republic of China, dated January 16, 2009. In order to properly reflect the commercial value of total production of the subject merchandise during the POR, where appropriate, the Department revised Itochu's FOP calculations by replacing the denominator with the quantity sold rather than the quantity produced.

We applied surrogate values based on publicly available information from Poland for the raw materials, as well as packaging, factory overhead, selling, general and administrative expenses (''SG&A''), and profit ratios. However, because we were unable to obtain Polish data to value the energy and transportation, we have relied upon publicly available information on the record from India. Itochu shipped the subject merchandise using a market economy freight carrier paid for in a market economy currency. Therefore, the Department is not applying a surrogate value for international freight.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Itochu during the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Polish and Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Polish import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Polish data, we calculated freight costs based on the reported distance from the supplier to the factory.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (''WPI'') for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China,* 69 FR 29509 (May 24, 2004). All of the Polish surrogate values were contemporaneous with the POR. However, some Indian surrogate values were adjusted using the WPI for India, as published in the International Financial Statistics of the International Monetary Fund.

Polish and Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the official exchange rate recorded on the date of sale based on exchange rate data from the Department's Web site.

Juice Apples: We valued juice apples using monthly prices of processing apples in Poland, covering each month of the POR, except for June 2007, for which there was no data, from the Institute of Agricultural and Food Economics, National Research Institute.

Amylase, Pectinex, Pectinase, and Packaging: We valued the amylase enzyme, pectinex enzyme, and pectinse enzyme, and all packaging using World Trade Atlas (''WTA'') data for Poland during the POR, published by Global Trade Information Services, Inc., which is sourced from EuroStat data.

Energy: We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. To value coal, we used the Energy & Taxes-Quarterly Statistics (2008) published by the International Energy Agency. We valued water using data from the Maharastra Industrial Development Corporation. This source provides industrial water rates within the Maharashtra province.

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its Web site.

Overhead, SG&A and Profit (''Financial Ratios''): The financial ratios were calculated based on the 2007 financial statements for two Polish juice producers, Sokpol Koncentraty sp.zo.o (''Sokpol''), and TAB Koncentraty sp.zo.o (''TAB'').

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period June 1, 2007, through May 31, 2008:

Non-frozen apple juice concentrate from the PRC	
Exporter	Weighted-average margin (percent)
Itochu Corporation	0.00

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it

rebuts, clarifies, or corrects information recently placed on the record.[2]

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this administrative review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this administrative review, which will include the results of its analysis raised in any such comments, within 120 days of publication of this preliminary result, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on an *ad valorem* basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis*, *i.e.*, less than 0.50 percent.

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise from Itochu entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Itochu, no deposit will be required; (2) for companies previously found to be entitled to a separate rate in a prior segment of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established in the most recent review of that company; (3) for all other PRC exporters, the cash deposit rate will be 51.74 percent, the PRC country-wide *ad valorem* rate; and (4) for non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i) of the Act, and 351.221(b)(4).

Dated: June 23, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–15454 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission,* in Part 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Initiation of New Shipper Review

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

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), received on May 21, 2009, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is November 1, 2008 through April 30, 2009.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994) (''Order''). On May 21, 2009, we received a timely request for a new shipper review from Qingdao Sea-line International Trading Co., Ltd. (''Sea-line'') in accordance with 19 CFR 351.214(c) and 351.214(d)(2). Sea-line has certified that it is the exporter of all of the fresh garlic it exported to the United States, which is the basis for its request for a new shipper review.

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(ii), in its request for a new shipper review, Sea-line, as an exporter, certified that (1) It did not export fresh garlic to the United States during the period of investigation (''POI''); (2) since the initiation of the investigation, it has never been affiliated with any company that exported subject merchandise to the United States during the POI, including any exporter or producer not individually examined during the investigation; and (3) its export activities are not controlled by the central government of the PRC. In addition, Jinxiang County Juxinyuan Trading Co., Ltd. (''Juxinyuan

Trading''), the producer of the subject merchandise, certified that it did not export the subject merchandise to the United States during the POI. In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Sea-line certified that, since the initiation of the investigation, it has never been affiliated with any Chinese exporter or producer who exported steel nails to the United States during the POI, including those not individually examined during the investigation has not been affiliated with . In accordance with 19 CFR 351.214(b)(2)(iv), Sea-line submitted documentation establishing the following: (1) The date on which it first shipped fresh garlic for export to the United States and the date on which fresh garlic were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.214(d)(1), we find that the request submitted by Sea-line meets the threshold requirements for initiation of a new shipper review for shipments of fresh garlic from the PRC, exported by Sea-line and produced by Juxinyuan Trading. *See* Memorandum to the File through Barbara E. Tillman, Director, AD/CVD Operations, Office 6, *Fresh Garlic from the People's Republic of China: Initiation of Antidumping New Shipper Review,* dated concurrently with this notice. *See* 19 CFR 351.214(g)(1)(i)(B).

The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act. It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Sea-line, which will include a separate rate section. The review will proceed if the response provides sufficient indication that Sea-line is not subject to either *de jure* or *de facto* government control with respect to its export of fresh garlic.

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109–280, (''H.R. 4''), was signed into law. Section 1632 of H.R. 4 temporarily suspended the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews initiated during the period April 1, 2006 through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of fresh garlic, exported by Sea-line, must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the per unit PRC-wide rate.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 24, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–15459 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 24, 2008, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on certain welded stainless steel pipes (WSSP) from the Republic of Korea. The review was requested by Bristol Metals LLC (domestic interested party), and covers one producer of the subject merchandise, SeAH Steel Corporation (SeAH). The period of review (POR) is December 1, 2006 through November 30, 2007. Based on our analysis of the comments received, we have made changes to the preliminary results, which are discussed in the ''Changes Since the Preliminary Results'' section below. For the final dumping margin, see the ''Final Results of Review'' section below.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 2008, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on WSSP from the Republic of Korea. *See Certain Welded Stainless Steel Pipes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 79050 (December 24, 2008) (*Preliminary Results*). In the preliminary results, the Department explained it intended to solicit quarterly pipe cost of production (COP) and constructed value (CV) information from SeAH after the preliminary results. On January 15, 2009, the Department issued a supplemental section D questionnaire requesting the quarterly cost information. On January 26, 2009, SeAH submitted its response. After evaluating the information, on April 29, 2009, the Department issued its preliminary decision to adjust the COP and CV information. *See* Memorandum from Gina Lee, Senior Accountant to Neal M. Halper, Director, Office of Accounting, *Proposed Adjustments to the Cost of Production and Constructed Value Information—SeAH Steel Corporation* dated April 29, 2009.

The Department conducted sales and cost verifications of SeAH in Seoul, South Korea in February 2009 and March 2009, and a sales verification of SeAH's U.S. affiliate, Pusan Pipe America (PPA) in April 2009. *See* the ''Verification'' section below for additional information.

On April 2, 2009, the Department extended the deadline for the final results from April 23, 2009 to June 22, 2009. *See Welded ASTM A–312 Stainless Steel Pipe From South Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 74 FR 14959 (April 2, 2009).

The Department invited parties to comment on the *Preliminary Results,* the preliminary decision to adjust COP and CV information, and the verification reports. On May 4, 2009, the Department extended the deadlines for case briefs and rebuttal briefs. On May 11, 2009, the domestic interested party and respondent filed timely case briefs.

On May 18, 2009, both parties filed rebuttal briefs.

The Department met with interested parties on May 28, 2009, and June 1, 2009. *See* Memorandum to the File from Dana Mermelstein, Program Manager, Office 6, *Administrative Review of the Antidumping Duty Order on Welded Stainless Steel Pipe from Korea: Meetings with Interested Parties,* dated June 2, 2009.

Period of Review

The POR is December 1, 2006 through November 30, 2007.

Scope of the Order

The merchandise subject to the antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of the antidumping duty order is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. However, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), from February 9, 2009 through February 13, 2009, and from March 9, 2009 through March 13, 2009, the Department verified the sales and cost information submitted by SeAH in its questionnaire responses provided during the course of this review. The Department also conducted verification of SeAH's U.S. affiliate, Pusan Pipe America (PPA) on April 15 and 16, 2009, in Los Angeles, California. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent. *See* Memorandum from Jacqueline Arrowsmith and Douglas Kirby, International Trade Compliance Analysts, to The File, ''Verification of the Sales Response of SeAH Steel Corporation (SeAH) in the 2006–2007 Antidumping Duty Administrative Review of certain welded Stainless Steel Welded Pipe from the Republic of Korea (South Korea),'' dated March 25, 2009 (''*Sales Verification Report*''); Memorandum from Douglas Kirby and Summer Avery, International Trade Compliance Analysts, to The File, ''Verification of the Sales Response of Pusan Pipe America (PPA) in the 2006–2007 Antidumping Duty Administrative Review of certain welded Stainless Steel Welded Pipe from the Republic of Korea (South Korea),'' dated April 27, 2009 (''*CEP Verification Report*''); Memorandum from Stephanie Arthur to Neal Halper ''Verification of the Cost Response of SeAH Steel Corporation in the Antidumping Duty Administrative Review of Welded ASTM A–312 Stainless Steel Pipe from Korea,'' dated April 28, 2009 (''*Cost Verification Report*''). The public versions of these verification reports are on file in the Central Records Unit (CRU), Room 1117 of the main Commerce Building.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Import Administration to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration; *Antidumping Duty Administrative Review of Certain Welded Stainless Steel Pipes from the Republic of Korea: Issues and Decision Memorandum for the Final Results* (*Decision Memorandum*), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is also on file in the CRU, and can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the results of verification, our analysis of comments received, and our consideration of information submitted by SeAH on January 26, 2009, in its supplemental questionnaire response, received subsequent to the issuance of the *Preliminary Results,* we have made adjustments to our margin calculations. As explained in our *Decision Memorandum,* we have continued to use a quarterly cost averaging methodology in calculating COP and CV. However, for these final results, we have made several changes to the calculation of COP and CV, and the margin program. We adjusted SeAH's reported financial expense ratio to (1) exclude interest income generated on retirement and severance deposits, and (2) include the net gain associated with currency options and swaps; we changed the adjustment applied to COM in our preliminary results pursuant to the major input and transactions disregarded rules; and, we made certain modifications to the program to ensure proper product comparisons and the use of the correct reporting period. These adjustments are discussed in detail in the *Decision Memorandum,* and in the Memorandum to the File, from Myrna Lobo, Case Analyst, *Calculation Memorandum for the Final Results of Administrative Review of the Antidumping Duty Order on Stainless Steel Pipe from the Republic of Korea—SeAH Steel Corporation* (June 22, 2009) at the section titled ''Changes from the Preliminary Results.'' *See also* Memorandum from Stephanie Arthur to Neal Halper, *Adjustments to the Cost of Production and Constructed Value Information for the Final Results—SeAH Steel Corporation,* (June 22, 2009).

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of December 1, 2006 through November 30, 2007:

Manufacturer/Exporter	Weighted-Average margin (Percent)
SeAH Steel Corporation	9.05

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise. The Department intends to issue appropriate assessment instructions directly to CBP 15 days

after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in these final results of review for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate from the investigation if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) For the company covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and, (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 7.00 percent, the all-others rate established in the less than fair value investigation. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe From the Republic of Korea,* 60 FR 10064 (February 23, 1995).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations 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.

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: June 22, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memorandum

Comment 1: Whether to Apply an Alternative Cost-Averaging Methodology
a. Legal Framework and Case Precedent
b. Significance of Cost Changes
c. Linkage Between Costs and Sales Prices
d. The Elimination of the Window Period for Price-to-Price Comparisons
e. The Cost Recovery Test
Comment 2: Application of the Major Input Rule
Comment 3: The Treatment of Gains Associated With Foreign Currency Swaps
Comment 4: The Treatment of Interest Income Earned on Retirement and Severance Deposits
Comment 5: Whether the Department Should Refrain From Zeroing Negative Margins
Comment 6: Calculation Issues

[FR Doc. E9–15492 Filed 6–29–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of New Shipper Review

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

SUMMARY: On September 9, 2008, the Department of Commerce (''the Department'') initiated a new shipper review (''NSR'') of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC'') covering sales of subject merchandise made by Shanghai Fangjia Industry Co., Ltd. (''Fangjia''). *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of New Shipper Review,* 73 FR 52296 (September 9, 2008) (''*Initiation of NSR*'').

The Department preliminarily determines that Fangjia has not made sales at less than normal value (''NV''). If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), of January 1, 2008 through June 30, 2008, for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Lori Apodaca, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–4551, respectively.

Background

The Department published an antidumping duty order on wooden bedroom furniture from the PRC on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (''the Order''). On July 11, 2008, Fangjia requested that the Department conduct an NSR of its sales of subject merchandise during the January 1, 2008 through June 30, 2008 POR. On September 9, 2008, the Department initiated an NSR of Fangjia.

On September 10, 2008, the Department issued an antidumping duty

questionnaire to Fangjia. Fangjia submitted its section A questionnaire response on October 9, 2008, and submitted its sections C and D questionnaire responses on November 3, 2008. The Department subsequently issued a supplemental questionnaire to Fangjia on March 23, 2009, to which Fangjia responded on April 22, 2009.

On February 27, 2009, the Department extended the deadline for the issuance of the preliminary results of the NSR until June 22, 2009. *See Wooden Bedroom Furniture from the People's Republic of China: Extension of Time for the Preliminary Results of the New Shipper Review,* 74 FR 8906 (February 27, 2009).

Period of Review

The POR is January 1, 2008, through June 30, 2008.

Scope of the Order

The product covered by the Order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the Order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[10] (9) jewelry armoires;[11] (10) cheval mirrors;[12] (11) certain metal parts;[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds;[14] and (14) toy boxes.[15]

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part,* 71 FR 38621 (July 7, 2006).

[12] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

[14] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Par*t, 72 FR 7013, 7015 (February 14, 2007).

[15] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply

Continued

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Bona Fide Analysis

Consistent with the Department's practice, the Department investigated the *bona fide* nature of the sales made by Fangjia for this review. In evaluating whether or not a single sale in an NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See, e.g., Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*citing Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum).

The Department preliminarily finds that the new shipper sales made by Fangjia were made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) The price and quantity of each new shipper sale was within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR; (2) Fangjia and its customer(s) did not incur any extraordinary expenses arising from the transactions; (3) each new shipper sale was made between unaffiliated parties at arm's length; (4) there is no record evidence that indicates that each new shipper sale was not made based on commercial principles; (5) the merchandise was resold at a profit; and (6) the timing of each of the new shipper sales does not indicate the sales were made on a non-*bona fide* basis. *See* the Memorandum titled, ''Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Shanghai Fangjia Industry Co., Ltd.'' dated June 22, 2009. Therefore, the Department has preliminarily found that Fangjia's sales of subject merchandise to the United States were * * * for purposes of this NSR.

Non-Market Economy Country Status

In every antidumping case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). *See also* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at *http://ia.ita.doc.gov/policy/* at p. 6 stating:

> [w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

Fangjia is a wholly Chinese-owned company and is located in the PRC. Therefore, the Department must analyze whether it can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

Throughout the course of this proceeding, Fangjia has placed a number of documents on the record to demonstrate absence of *de jure* control including: its articles of association, the

with American Society for Testing and Materials (ASTM) standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings.

''Foreign Trade Law of the People's Republic of China'' and the ''The Company Law of the People's Republic of China.'' *See* Exhibits 2 and 7 of its Section A questionnaire response dated October 9, 2008 (''Section A response''). The evidence provided by Fangjia supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.

B. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22587*; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are subject to a degree of government control which would preclude the Department from assigning separate rates.

In its Section A response, Fangjia submitted evidence indicating an absence of *de facto* government control over its export activities. The evidence placed on the record of this review by Fangjia demonstrates an absence of *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Specifically, this evidence indicates that: (1) Fangjia sets its own export prices independent of the government and without the approval of a government authority; (2) Fangjia retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Fangjia's general manager has the authority to negotiate and bind the company in an agreement; (4) Fangjia's management is selected by its owners; and (5) there is no restriction on Fangjia's use of export revenues. *See* Section A response at 4–7. Therefore, because Fangjia has demonstrated a lack of *de jure* and *de facto* control, we have preliminarily determined it is eligible for a separate rate.

Surrogate Country

When the Department is reviewing imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum to the File, ''New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Values for the Preliminary Results,'' dated June 22, 2009 (''Factor Valuation Memorandum'').

The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are comparable to the PRC in terms of economic development. See the Memorandum titled, ''Request for a List of Surrogate Countries for a 2008 New Shipper Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China,'' dated September 15, 2008. It is the Department's practice to select from among these countries based on the availability and reliability of data. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

The Department is preliminarily selecting the Philippines as the surrogate country for the PRC. The Philippines is at a level of economic development comparable to that of the PRC, it is a significant producer of comparable merchandise, and the Department has reliable, publicly available data from the Philippines that it can use to value the FOPs.

Fair Value Comparisons

To determine whether sales of the subject merchandise made by Fangjia to the United States were at prices below NV, the Department compared Fangjia's export price (''EP'') to NV, as described below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for sales to the United States for Fangjia because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price (*i.e.,* CEP) was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight, and brokerage and handling. For Fangjia, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values. *See* Factor Valuation Memorandum for details regarding the surrogate values for movement expenses.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. *See also* 19 CFR 351.408. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-

economy currency, the Department may value the factor using the actual price paid for the input. *See Lasko Metal Products, Inc.* v. *United States,* 43 F.3d 1442, 1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use SVs to determine the NV. *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review,* 72 FR 42386 (August 2, 2007) (''*Brake Rotors*''), and accompanying Issues and Decision Memorandum at Comment 1.

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompany H.R. 3, H.R. Rep. 100–576, at 590–91 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. It is the Department's practice to find a that there is reason to believe or suspect that inputs may be subsidized if the facts developed in the United States or third country countervailing duty findings indicate the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry-specific export subsidies). *See Brake Rotors and China National Machinery Imp. & Exp. Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1338–39 (CIT 2003). The Department has reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non-industry specific export subsidies and, therefore, finds it reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Brake Rotors* at Comment 1. Accordingly, the Department has disregarded prices from India, Indonesia, South Korea, and Thailand in calculating the Philippine import-based SVs.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Philippine SVs (except as noted below). In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Philippine import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.,* where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the U.S. Court of Appeals for the *Federal Circuit in Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). The Department 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 U.S. Federal Reserve Bank. For a detailed description of all SVs used to value the respondents' reported FOPs, *see* Factor Valuation Memorandum.

Fangjia's producer, Jiangsu Danyang Brilliant Furniture Co., Ltd., (''Brilliant'') purchased all reported FOPs from NME sources. Therefore, to calculate SVs, the Department used contemporaneous import data from the World Trade Atlas online, published by the Philippines National Statistics Office. Among the FOPs for which the Department calculated SVs using Philippine Import Statistics are plywood, screws, wood plugs, glue, lacquer, hinges, bolts, and packing materials. For a complete listing of all of the inputs and the valuation for each input, *see* Factor Valuation Memorandum.

Where the Department could not obtain information contemporaneous with the POR with which to value FOPs, the Department adjusted the SVs using, where appropriate, the Philippine Wholesale Price Index (''WPI'') available at the Web site of the Philippines National Statistics Office at *http://www.census.gov.ph/data/sectordata/datawpi.html. See* Factor Valuation Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression-based wage rate as reported on Import Administration's Web site, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, using 2005 data, *http://ia.ita.doc.gov/wages/05wages/05wages-051608.html#table1.* The source of these wage-rate data is the International Labour Organization, Geneva, Labour Statistics Database, Copyright International Labour Organization, 1998–2007 Yearbook, Selection: years: 2004–2005, Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. See Factor Valuation Memorandum.

To value electricity, we used data from *Doing Business in the Philippines,* published by SGV & Co. *See* Factor Valuation Memorandum.

To calculate the value for domestic brokerage and handling, the Department used brokerage fees available at the website of the Republic of the Philippines Tariff Commission, *http://www.tariffcommission.gov.ph/cao01–2001.html.*

We calculated the SV for truck freight using Philippine data from three sources, (1) *The Cost of Doing Business in Camarines Sur,* available at the Philippine government's Web site for the province *http://www.camarinessur.gov.ph,* (2) *Province of Misamis Oriental: Cost of Doing Business,* available at the Web site *http://www.orobpc.org.ph:8080/pdf/costmor.pdf,* and (3) a news article from the *Manila Times* entitled ''Government Mulls Cut in Export Target.'' *See* Factor Valuation Memorandum.

To value factory overhead, selling, general, and administrative expenses (''SG&A''), and profit, we used the audited financial statements for the fiscal year ending December 31, 2007, from the following producers: Maitland-Smith Cebu, Inc.; Casa Cebuana Incorporated; Global Classic Designs, Inc.; Diretso Design Furniture Inc.; and Las Palmas Furniture, Inc., all of which are Philippine producers of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.,* cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. For further discussion, *see* Factor Valuation Memorandum.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the period January 1, 2008, through June 30, 2008:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter/producer	Weighted-average margin (percent)
Shanghai Fangjia Industry Co., Ltd./Jiangsu Danyang Brilliant Furniture Co., Ltd	0.00

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttals to written comments may be filed no later than five days after the written comments are filed. *See* 19 CFR 351.309(d). Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on diskette. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). If requested, a hearing normally will be held two days after the scheduled date for submission of rebuttal comments. *See* 19 CFR 351.310(d).

The Department intends to issue the final results of this NSR, which will include the results of its analysis of any issues raised in written comments, within 90 days of the date on which these preliminary results are issued, in accordance with 19 CFR 351.214(i)(1), unless the time limit is extended. *See* 19 CFR 351.214(i)(2).

Assessment Rates

Upon completion of the final results, pursuant to 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 the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in NSRs. Therefore, the posting of a bond under section 751(a)(1)(B)(iii) of the Act in lieu of a cash deposit is not available in this case.

The following cash deposit requirements will be effective upon publication of the final results of this NSR for shipments of subject merchandise from Fangjia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced by Brilliant and exported by Fangjia, the cash deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Fangjia but not produced by Fangjia, the cash deposit rate will continue to be the PRC-wide rate of 216.01 percent; (3) for subject merchandise exported by Fangjia and produced by Fangjia, the cash deposit rate will continue to be the PRC-wide rate of 216.01 percent; (4) for subject merchandise produced by Fangjia, and exported by any party but itself, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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

The Department is issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: June 22, 2009.

Ronald K Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–15495 Filed 6–29–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On July 30, 2008, the U.S. Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan. The review covers four manufacturers/exporters: JFE Steel Corporation; Nippon Steel Corporation; NKK Tubes; and Sumitomo Metal Industries, Ltd. (SMI). The period of review (POR) is June 1, 2007, through May 31, 2008. Following the receipt of a certification of no shipments from all four respondents, we notified the domestic interested party of the Department's intent to rescind this review and provided an opportunity to comment on the rescission. We received no comments. Therefore, we are rescinding this administrative review.

DATES: *Effective Date:* Insert date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2007, United States Steel Corporation (U.S. Steel), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of JFE Steel Corporation, Nippon Steel Corporation, NKK Tubes, and SMI. On July 30, 2008, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a

notice initiating this review of the antidumping duty order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan for the period June 1, 2007, through May 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review,* 73 FR 44220 (July 30, 2008). On August 22, 2008, the Department issued its antidumping duty questionnaire to these four companies. On September 2, 2008, NKK Tubes submitted a letter to the Department certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR. On September 8, 2008, JFE Steel Corporation also submitted a letter to the Department, certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR. Finally, Nippon Steel Corporation and SMI submitted letters to the Department on September 9, 2008, and September 12, 2008, respectively, certifying that the companies made no shipments or entries for consumption in the United States of the subject merchandise during the POR.

Scope of the Order

The products covered by this review are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such

products are covered by the scope of this review.

Specifically excluded from the scope of this review are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications. D. Line and riser pipe for deepwater application, i.e., line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.,* ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (CBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by the petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Rescission of the Administrative Review

As noted above, all four respondents submitted letters to the Department indicating that they did not make any shipments or entries of subject merchandise to the United States during the POR. In response to the Department's query to CBP, CBP data showed subject merchandise manufactured by one of the respondent companies, SMI, was entered for consumption into the United States during the POR from third countries. On February 19, 2009, the Department placed, on the record of this review, copies of the entry documents in question.

Additionally, on February 19, and April 29, 2009, the Department sent questionnaires to SMI and requested that SMI further substantiate its claim of no shipments. On March 27, and May 13, 2009, SMI provided the Department with responses, and explained in detail that it had no knowledge of the entries in question. On the basis of these documents and submissions, the Department has concluded that there is no evidence on the record that, at the time of sale, SMI had knowledge that these entries were destined for the United States, nor is there evidence that SMI had knowledge that any of these entries of subject merchandise entered the United States during the POR. *See* Memorandum to the File, from Alexander Montoro, International Trade Compliance Analyst, through Nancy Decker, Program Manager, AD/CVD Operations Office 1, entitled ''Intent to Rescind the Antidumping Duty Administrative Review on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan,'' May 28, 2009 (Intent to Rescind Memo). Specifically, subject merchandise produced by SMI entered the United States during the POR under its antidumping case number, but this occurred without the company's knowledge by way of intermediaries. *See* Intent to Rescind Memo. For JFE Steel Corporation, Nippon Steel Corporation, and NKK Tubes, the CBP data showed no entries of subject merchandise into the United States during the POR. Thus, the Department found that the respondents' claims of no shipments or entries for consumption to be substantiated. On May 28, 2009, the Department notified interested parties of its intent to rescind this administrative review and gave parties until June 8, 2009, to provide comments. *See* Intent to Rescind Memo. No comments were received.

Based upon the certifications and the evidence on the record, we are satisfied that none of the respondents had shipments of subject merchandise to the United States during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Therefore, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment of Dumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by the respondent company for which it did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment of Dumping Duties* for a full discussion of this clarification. The Department will issue liquidation instructions to CBP 15 days after the publication of this notice of rescission of review.

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

Dated: June 18, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–15493 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC''), received on May 21, 2009, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is May 1, 2008, through April 30, 2009.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Lori Apodaca at (202) 482–4551, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1995, the Department published in the Federal Register the antidumping duty order on pure magnesium from the PRC. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine,* 60 FR 25691 (May 12, 1995). Therefore, May is the anniversary month and a request for a new shipper review is timely filed if made during the six month period ending with the anniversary month. *See* 19 CFR 351.214(d). On May 21, 2009, we received a new shipper review request from an exporter, Tianjin Xiangghaiqi Resources Import & Export Trade Co., Ltd. (''TXR''). On May 28, 2009, TXR submitted a certification from the manufacturer of its subject merchandise, Pan Asia Magnesium Co., Ltd. (''PAM''), certifying that PAM's export activities are not controlled by the government of the PRC. Furthermore, on June 1, 2009, TXR submitted corrections to its May 21, 2009, new shipper review request.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(b)(2)(ii)(A), TXR certified that it did not export pure magnesium to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(B), PAM, the producer of the pure magnesium exported by TXR, provided a certification that it did not export the subject merchandise to the United States during the POI. In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), TXR and PAM certified that, since the initiation of the investigation, both have never been affiliated with any exporter or producer who exported pure magnesium to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), TXR and PAM also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), TXR submitted documentation establishing the following: (1) The date on which it first shipped pure magnesium for export to the United States; (2) the volume of its first shipment; (3) the date when subject merchandise entered the United States for consumption; and (4) the date of its first sale to an unaffiliated customer in the United States.

The Department requested a U.S. Customs and Border Protection (''CBP'') database query for the purpose of substantiating that TXR's shipment of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department reviewed the CBP data and was able to verify that TXR's shipment of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214, we find that the request submitted by TXR meets the threshold requirements for initiation of a new shipper review for shipments of pure magnesium from the PRC manufactured by PAM and exported by TXR. See Memorandum to the File, dated June 8, 2009, regarding TXR's NSR Initiation Checklist.

The POR is May 1, 2008, through April 30, 2009. *See* 19 CFR 351.214(g)(1)(i)(A). We intend to issue preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i)(1).

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of pure magnesium manufactured by PAM and exported by TXR must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current PRC-wide rate of 108.26 percent.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 25, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–15488 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Miami University, et al.

Notice of Consolidated Decision on Applicationsfor Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–014. Applicant: Miami University, Oxford, OH 45056. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: See notice at 74 FR 23394, May 19, 2009.

Docket Number: 09–018. Applicant: Texas A&M University, College Station, TX 77843–4458. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 23394, May 19, 2009.

Docket Number: 09–020. Applicant: Columbia University, New York, NY 10032. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 23394, May 19, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: June 22, 2009.

Christopher Cassel,

Acting Director.

Subsidies Enforcement Office.

Import Administration.

[FR Doc. E9–15491 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Princeton University

Notice of Decision on Application for Duty–Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L .106–36; 80 Stat. 897; 15 CFR part 301. Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Ave, NW, Washington, D.C.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instrument described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 09–022. Applicant: Princeton University, Princeton, NJ 08544. Instrument: SWAXS Dual 1D Position–Sensitive-Detector (PSD) System. Manufacturer: Hecus X–Ray System GmbH, Austria. Intended Use: See notice at 74 FR 23393, May 19, 2009. Reasons: The instrument is unique, in that it is a dual system, which allows simultaneous acquisition of time resolved small–angle and wide–angle x–ray scattering data. Justification for Duty–Free Entry: We know of no instrument of the same general category suited to these purposes, which was being manufactured in the United States at the time of order of each instrument

Dated: June 22, 2009.

Christopher Cassel,

Acting Director.

Subsidies Enforcement Office.

Import Administration.

[FR Doc. E9–15490 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–20A12]

Export Trade Certificate of Review

ACTION: Notice of Application (#84–20A12) To Amend an Export Trade Certificate of Review Previously Issued to Northwest Fruit Exporters.

SUMMARY: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Acting Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–20A12.''

The original Certificate for Northwest Fruit Exporters was issued on June 11, 1984 (49 FR 24581, June 14, 1984), and last amended on September 17, 2008 (73 FR 54561, September 22, 2008).

A summary of the application for an amendment follows.

Summary of the Application:

Applicant: Northwest Fruit Exporters (''NFE''), 105 South 18th Street, Suite 227, Yakima, Washington 98901.

Contact: James R. Archer, Manager to NFE, Telephone: (509) 576–8004.

Application No.: 84–20A12.

Date Deemed Submitted: June 18, 2009.

Proposed Amendment: NFE seeks to amend its Certificate to:

1. Delete the following companies as Members of the Certificate: Clasen Fruit & Cold Storage Co., Union Gap, WA; Lotus Fruit Packing, Inc., Brewster, WA; Snokist Growers, Yakima, WA; and Tree To You, LLC, Chelan, WA.

2. Add the following companies as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.(1)): Cervantes Orchards & Vineyards LLC, Grandview, WA; Columbia Valley Fruit, L.L.C., Yakima, WA; Conrad & Gilbert Fruit, Grandview, WA; Diamond Fruit Growers, Odell, OR; Orchard View Farms, Inc., The Dalles, OR; and Wenoka Sales LLC, Wenatchee, WA.

3. Change the listing of the following Member: Change ''Congdon Orchards, Inc., Yakima, WA'' to the new listing ''Congdon Packing Co. L.L.C., Yakima, WA''.

Dated: June 25, 2009.

Jeffrey Anspacher,

Acting Director, Office of Competition and Economic Analysis.

[FR Doc. E9–15487 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 0906181063–91064–01]

Request for Comments on ''Report to NIST on the Smart Grid Interoperability Standards Roadmap'' (Contract No. SB1341–09–CN–0031—Deliverable 7)

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on a report, entitled ''Report to NIST on the Smart Grid Interoperability Standards Roadmap'' (the ''EPRI Report''), prepared by the Electric Power Research Institute (EPRI) under a contract (Contract No. SB1341–09–CN–0031—Deliverable 7) awarded to engage Smart Grid stakeholders in the development of a draft interim standards roadmap. NIST will consider the EPRI Report, and comments received on the EPRI Report, in the development of NIST's interim ''roadmap'' for Smart Grid interoperability standards, a responsibility assigned to NIST under the Energy Independence and Security Act of 2007. All comments submitted should reference this notice.

DATES: Comments must be received on or before July 30, 2009.

ADDRESSES: Written comments may be sent to: George Arnold, 100 Bureau Drive, Stop 8100, National Institute of Standards and Technology, Gaithersburg, MD 20899–8100. Electronic comments may be sent to: *smartgridcomments@nist.gov*.

The report is available at: *http://www.nist.gov/smartgrid/InterimSmartGridRoadmapNISTRestructure.pdf* and at *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/WebHome*.

Additional information may be found at: *http://www.nist.gov/smartgrid*.

FOR FURTHER INFORMATION CONTACT: George Arnold, 100 Bureau Drive, Stop 8100, National Institute of Standards and Technology, Gaithersburg, MD 20899–8100, telephone (301) 975–5627.

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140) requires the Director of NIST ''to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems.'' The Smart Grid is an important component of the Administration's comprehensive plan to reduce U.S. dependence on foreign oil, reduce greenhouse gas emissions, create jobs, and help U.S. industry lead in the global race to develop and apply clean energy technology. President Obama has set ambitious short and long-term goals, necessitating quick action and sustained progress in implementing the components, systems, and networks that will make up the Smart Grid.

In April 2009, NIST announced a three-phase plan to expedite development of interoperability standards for the Smart Grid. The EPRI Report is an input to the first phase of the NIST plan, in which NIST has sought to engage utilities, equipment suppliers, consumers, standards developers, and other stakeholders in a public process to identify Smart Grid interoperability standards and priorities for development of new standards. The full NIST plan is available at *http://www.nist.gov/public_affairs/smartgrid_041309.html*.

Under a contract (Contract No. SB1341–09–CN–0031) that NIST awarded earlier this year in connection with the first phase of the NIST plan, EPRI technical experts compiled and refined inputs from a variety of Smart Grid stakeholders. These inputs included technical contributions made at two EPRI-facilitated, two-day, public workshops (April 28–29, 2009, in Reston, Va; and May 19–20, 2009, in National Harbor, Md.). The EPRI Report also incorporates contributions from six expert working groups established by NIST in 2008, and from a cybersecurity coordination task group established in 2009. Hundreds of individuals, representing a broad range of stakeholders, have participated in the roadmapping process to date.

The EPRI Report contains material gathered and refined by the contractor using its technical expertise. The EPRI Report is not a formally reviewed and approved NIST publication. Rather, it is one of many inputs into the ongoing NIST-coordinated roadmapping process.

NIST is now reviewing EPRI's synthesis of stakeholder inputs received through the end of May 2009, as presented in the EPRI Report. NIST also will review the comments received from the public on the EPRI Report.

NIST will use the EPRI Report and public comments as inputs in drafting an initial NIST Smart Grid Interoperability Framework. The NIST Framework, which is intended to be a living document, will describe a high-level architecture, identify an initial set of key standards, and provide a roadmap for development of new or revised standards needed to realize the Smart Grid. Release 1.0 of the NIST Smart Grid Interoperability Standards Framework is expected to be available in September.

Authority: Section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140).

Request for Comments: NIST seeks comments on EPRI's ''Report to NIST on the Smart Grid Interoperability Standards Roadmap.'' Comments should include a reference to this **Federal Register** notice. After evaluating the report and comments submitted in response to this request, as well as other inputs, NIST will draft an initial NIST Smart Grid Interoperability Framework, in accordance with responsibilities assigned to NIST under the EISA.

Dated: June 25, 2009.

Patrick Gallagher,

Deputy Director, NIST.

[FR Doc. E9–15467 Filed 6–29–09; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Stay of Enforcement Pertaining to Bicycles and Related Products

AGENCY: Consumer Product Safety Commission.

ACTION: Stay of enforcement.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') is announcing its decision to stay enforcement of section 101 (a) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') with regard to certain parts of bicycles, jogger strollers, and bicycle trailers designed or intended primarily for children 12 years of age or younger. The Commission is staying enforcement of the specified lead level as it pertains to certain parts of these products, specifically components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead.

DATES: This stay of enforcement is effective on June 30, 2009 and will remain in effect until July 1, 2011. The

Commission may, based on evidence submitted to the Commission as described in the **SUPPLEMENTARY INFORMATION** portion of this document, decide to continue the stay for an additional period of time.

FOR FURTHER INFORMATION CONTACT: John ''Gib'' Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *jmullan@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, 122 Stat. 3016. Section 101(a) of the CPSIA phases in declining limits on allowable lead content in children's products (defined as a consumer product designed or intended primarily for children 12 years of age or younger), starting on February 10, 2009 with 600 ppm and decreasing to 300 ppm on August 14, 2009. On August 15, 2011, the lead limit will be 100 ppm unless the Commission determines that a limit of 100 ppm is not technologically feasible for a product or a product category. The law does contain certain exclusions from the lead limits. One is for component parts that contain more than the allowable lead content, but where the component is not accessible to a child through normal and reasonably foreseeable use and abuse. The Commission can also determine, for certain electronic devices, that it is not technologically feasible for them to comply immediately with the lead limits and shall establish a schedule by which such devices shall be in full compliance unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission. The Commission also, under section 101 (b)(1) of the CPSIA may exclude a specific product or material that exceeds the lead limits if the Commission determines on the basis of the best available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither: (1) Result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor (2) have any other adverse impact on public health or safety.

On March 11, 2009, the Commission issued a final rule on procedures and requirements for seeking, inter alia, an exclusion under section 101(b)(1) of the CPSIA for materials and products that exceed the lead content limits. 74 FR 10475. The final rule set forth: (1) That a request for exclusion must be accompanied by evidence that will meet the statutory test for the exclusion outlined above; and (2) that the Office of Hazard Identification and Reduction (''EXHR'') staff would evaluate the evidence and provide a scientific recommendation to the Commission as to whether the party submitting the request had met this statutory test.

The Bicycle Product Suppliers Association (''BPSA'') filed a petition to exclude a class of materials for certain parts of bicycles, jogger strollers, and bicycle trailers intended for children ages 12 and younger under section 101(b)(1) of the CPSIA. The petition was submitted prior to March 11, 2009, the date of the issuance of the final rule on procedures or requirements for seeking an exclusion under section 101(b)(1) of the CPSIA. The Commission has decided to treat this petition as a request for exclusion under these procedures. The petitioners sought exclusion for components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4 percent lead. Specified components include, but are not limited to: Tire valve stems, spoke nipples, brake levers, and brake lever bushings.

The petitioners submitted an exposure study, extrapolated from the ''best-available existing data'' based on an analysis of the lead in metal jewelry (for an aluminum and a brass alloy) and a faucet (for a brass alloy). This study concluded ''estimated lead intakes from bicycle and related product components are well below background intakes of lead from food and water, and * * * such intake will not result in a measurable impact on blood lead levels in children * * *.'' *Exposure Evaluation of Manufactured Components in Consideration for Exclusion from the Consumer Product Safety Improvement Act (CPSIA),* Gradient Corporation (January 26, 2009).

The petitioners also asserted that steel, aluminum, and copper alloys containing lead are necessary for the functional purpose of the equipment and replacement-part components. For support, they point to the European Union's End-of-Life Vehicles (ELV) Directive exemptions for lead in steel, aluminum and copper alloys (Öko-Institut e.V., Final Report: Adaptation to Scientific and Technical Progress of Annex II, Directive 2000/53/EC, §§ 4.2, 4.4, and 4.5, (Jan. 16, 2008)), and the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive (EU Directive 2002/95/EC, January 27, 2003), which are based on the contribution of lead to the machinability, strength and corrosion resistance, and the availability (or lack thereof) of substitute materials that do not contain lead.

The Commission denied the petitioners' request for exclusion under section 101(b)(1) of the CPSIA. However, for the reasons discussed below, the Commission has decided to issue a temporary stay of enforcement.

II. Discussion

The petitioners provided data suggesting that the components in children's bicycles and related products contain lead in amounts not greater than those permitted under the RoHS and ELV Directives. As noted earlier in Part I of this document, the petition was filed before the Commission issued its final rule on procedures and requirements, and therefore, before the petitioners knew how the Commission would interpret the language in section 101(b)(1) of the CPSIA. Thus, they presented information that the lead exposure from their components would neither result in any measurable increase in blood lead level (a conclusion that the Commission has since determined is not dispositive of the absorption analysis in section 101(b)(1), although certainly important to scientists considering the risk of lead exposure), nor have any adverse impact on public health and safety. The exposure study was not based on actual measurements or analysis of the component parts of children's bicycles and related products and the materials may or may not be sufficiently similar to the bicycle component parts to serve as a reasonable basis for the evaluation. Children riding these bicycles and related products will touch the brake levers, and may also touch the tire valve stem and with other component parts. The petitioners' study did conclude that some lead would be ingested by a child who touched component parts containing lead in the amount the report determined to be comparable to a child handling a bicycle's brake levers and valve stems. The Commission staff has looked at this modeling data and has stated that if ingestion of lead occurs, some portion of the ingested lead will be absorbed into the body, however small the absorbed amount. Because the petitioners' study indicated that children's use of a bicycle or related products could result in intake of lead,

and therefore absorption, the petition did not meet the statutory requirement for exclusion set out in section 101(b)(1)(A) of the CPSIA.

The petitioners also analogized their situation to the technological feasibility criterion in the electronics device exclusion for their reliance on the ELV and RoHS exemptions for certain metal alloys and components. However, no such criterion is specified in section 101(b). The ELV and the RoHS Directives are focused on reducing hazardous waste in landfills and encouraging recycling of these hazardous waste products and thus have quite different purposes than the lead provisions of the CPSIA, which focus on protecting children from exposure to lead through contact with it in children's products. Nevertheless, the Commission recognizes that, unless it takes some action with regard to the information provided by the petitioners, the riders of these bicycles—children 12 and younger—could likely face a more serious and immediate risk of injury or death. Therefore, the Commission is today announcing a time-limited stay of enforcement with regard to certain components of children's bicycles and related products.

The petitioners allege, and the Commission believes it could bear out, that if any period of time passes in which youth bicycles are not available for sale, some parents would allow their children to ride adult bicycles. The Commission recognizes that correctly sizing the bicycle to the rider is an important safety consideration and includes this recommendation in its bicycle safety messages. Children who cannot comfortably reach the pedals or who have to use the more complicated braking and gear shift mechanisms found on adult bicycles are at greater risk of injury than children riding properly sized and equipped bicycles. In a comprehensive study of bicycle riding done by the Commission staff in the early 1990s, several reasons were cited for the higher rates of injury among child riders. The primary reasons were cognitive and physical immaturity. The study also found that one of the factors in children's injuries was ''riding the wrong size bicycle.''

This safety dilemma applies equally to bicycles that have already been made and are in inventory with dealers or have already been sold and are in the hands of resellers or consumers. If parents with children aged 12 and younger are unable to buy youth-sized bicycles (whether new or used) they may very well choose to allow their children to ride adult bicycles. Bicycles need periodic maintenance and repair. An inability to obtain certain replacement parts could lead to these bicycles becoming inoperable, or being ridden with worn parts. If no substitute parts are available, this would similarly lead to some parents consenting to their children riding adult bicycles before they are physically and mentally capable of safely operating them. While it might be possible to change out some of the non-complying components on existing bicycles, for many of the components that is simply not an option. Thus replacement parts that have the same amount of lead content (or less) as the original part are included in our enforcement stay.

The petitioners allege that a certain amount of lead is needed in some component parts of their vehicles for machinability, strength, corrosion resistance and functionality. The petitioners point to the ELV Directive for their support of this contention. However, the ELV Directive's exemption for steel for machining purposes containing up to 0.35% lead by weight seems to rest more on the easier machining properties of leaded steel than on safety considerations. The ELV report deals with leaded steels versus unleaded steels, rather than an analysis of how much lead is actually needed for any particular application. Galvanized steel does, according to the report, have advantages in corrosion resistance, which could have safety implications. The exemption for aluminum for machining purposes with a lead content up to 0.4% by weight was granted due to its higher resistance to corrosion and to the extent it is used in brake systems and perhaps certain other applications, such an exemption would appear to be safety related. The granting of the exemption for copper alloy containing up to 4% lead by weight, like steel for machining purposes, appears to be chiefly because the lead makes the copper more easily machinable. The ELV report noted that the presence of lead did not significantly affect the strength or corrosion resistance of the copper alloy. The petitioners do state that the enhanced machinability of copper alloys ''permits the creation of deep grooves in threaded parts such as valve stems that are needed to ensure secure cap and air valve fitment for safety reasons.'' See Petition for Temporary Final Rule to Exclude a Class of Materials Under Section 101(b) of the Consumer product Safety Improvement Act, dated January 28, 2009, at 11. For the last ELV review, the copper industry was asked to indicate the applications in which the unavoidable use of lead had safety implications, but their response had not been received at the time the report was written. Thus the report's conclusion on copper alloys was that they were not able to carry out an in-depth evaluation based on the information that was made available to them and that the exemption should continue until a full assessment is carried out.

Another argument advanced by the petitioners and also supported by the ELV report is that, for certain alloys, no acceptable substitutes exist or if they exist, they do not exist in sufficient quantities to satisfy the global requirements. In addition, at a public meeting with the BPSA held on March 11, 2009, petitioners claimed that new bicycles ''still need to rely on recycled materials for frame, brake levers, associated components, etc.'' and that, ''recycling that material allows for an uncontrollable potential for trace amounts of lead greater than the CPSIA limits, especially as the limits step down to 300 parts per million.'' See Statement of John Nedeau, President, BPSA, at the March 11, 2009, Public Meeting on Bicycles. The meeting is available for viewing at *http://www.cpsc.gov/about/cpsia/bicycles.html*.

The Commission staff had very little time to assess these issues independently. Therefore, the ELV report's analysis, which was strictly limited to the technological feasibility of a substitute for lead and not on the higher cost of a viable substitute, is instructive. The ELV report found, for example, that there was as yet no technologically feasible way to remove lead from aluminum. To the extent that these alloys are required for safety reasons related to functionality, greater durability, or corrosion resistance, removing the lead from those alloys could result in a bicycle that is more prone to structural breakage, premature brake failure, or other defects that could present a risk of injury that should be evaluated to ensure such substitutions do not result in unintended or unforeseen defects. For example, failure of a less durable brake lever may result in an inability to stop or control a bicycle and could result in an injury to the child operating the bicycle. In contrast, Congress has eliminated the risk analysis associated with the absorption of lead. Yet, while we acknowledge that there are adverse health effects associated with lead poisoning or elevated blood lead levels, we also must acknowledge that, there may be a greater risk of injury to children if the removal of lead from these components results in structural weakness or other defects, such as brake

or frame failure, which can cause the rider to lose control of the bicycle and/or crash which are more significant than any risks associated with the possible absorption of lead. To the extent jogger strollers and bicycle trailers designed or intended primarily for children 12 years of age or younger contain components made with the same metal alloys needed for durability and corrosion resistance, the failure of these components would present similar risks of injury to the children riding in them as would a component failure in a bicycle. In such circumstances, enforcement discretion is the only means for the Commission to protect children.

The petitioners did not address what level of lead is necessary for their various components to meet acceptable functionality, durability and corrosion criteria. The industry, at the March 11, 2009 public meeting indicated that in terms of the uncontrollable variability of the lead content in the metal alloys they buy, ''the ongoing challenge is the variability in the recycled materials and the upcoming 300 ppm standard'' in August of this year. ''We're concerned that even though we specify this and even though we check for it, inevitably some of it may get through.'' Comments of Bob Burns and John Nedeau, March 11, 2009, Public Meeting on Bicycles.

The petitioners appeared to be in various stages of attempting to comply with the lead limits. They stated at the March 11, 2009 public meeting that they have been working diligently to remove, substitute or make essential lead-containing components inaccessible. Comments of John Nedeau, March 11, 2009, Public Meeting on Bicycles. For example, they discussed changes in the design of the tire valve by extending the rubber on the stem further up towards the brass valve and placing the cap on the stem securely. Bob Burns stated that such changes would result in the stem/cap combination passing the use and abuse torque test. In addition, they have been working on the exterior portion of the brass valve to contain less than 300 ppm lead. However, issues still remained with the accessible inner portion on the valve, or the valve core, the machinability of which is critical for air retention. Despite industry attempts, they have not yet been able to source a valve core that is below the 600 or 300 parts per million standard. Comments of Bob Burns, March 11, 2009, Public Meeting on Bicycles. The industry also stated that bicycles are different from ATVs and that there is a high-end industry and a low-end industry. According to Bob Burns, lower-priced, heavier bicycles are more likely to have recycled or less refined materials and it may not be possible to use virgin alloys. Although he indicated that higher end bicycle manufacturers may be able to source compliant metals, he questioned whether sourcing compliant metals would be competitively feasible in the lower price markets. *Id.*

In carrying out its responsibilities to protect the public, the Commission must consider the more immediate safety issue that needs to be addressed and that is presented by requiring the immediate change in construction materials for bicycles that would be needed to comply with the CPSIA. The Commission currently lacks the information it needs to make a thorough assessment of this industry's state of compliance with the lead limits. The industry needs more time to gather this information, taking into account their on-going work in this area, and the Commission needs time to review that information. To afford the manufacturers an appropriate amount of time to continue the testing they are already doing and to conduct any research and development necessary to bring component parts into compliance with the CPSIA and to identify any parts that are either technologically infeasible to bring into compliance during the stay period or identify those where such compliance, while technologically feasible, would expose children to other and greater safety risks, the stay will remain in effect until July 1, 2011. The stay of enforcement here is issued with the expectation that manufacturers will not simply rely on the continued stay of enforcement for a particular metal alloy, but will explore other ways in which to comply with the lead limits before the stay expires on July 1, 2011.

III. The Stay

The United States Consumer Product Safety Commission hereby stays enforcement of section 101(a) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') and related provisions with respect to certain parts of bicycles, jogger strollers, and bicycle trailers designed or intended primarily for children 12 years of age or younger, until July 1, 2011, upon the following conditions:

A. The stay shall apply to bicycles, jogger strollers, and bicycle trailers (''Bicycles and Related Products'') that were manufactured before February 10, 2009, and to Bicycles and Related Products made on or after that date through June 30, 2011. The stay with regard to Bicycles and Related Products made during this time period shall remain in effect for the life of those products.

B. The stay shall apply only to the following types of original equipment parts for Bicycles and Related Products: Components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead.

C. The stay shall also apply to any metal part sold separately as a replacement for one of the parts described above, provided that the lead content in the replacement part is less than or equal to the lead content in the part originally installed on the Bicycles and Related Products.

D. Each manufacturer (which can include a distributor where appropriate) who is covered by the stay shall file with the Secretary of the Commission, not later than 60 days after the publication of this stay in the **Federal Register**, a report identifying each model of Bicycle or Related Product it has produced between May 1, 2008 and May 1, 2009. For each such model, the manufacturer shall give the production volume by calendar month and shall list each component part that is made of metal and that is accessible to children, the material specification for each part, and a measurement of the lead content of representative samples of each part in parts per million(ppm). The lead content measurement may be by x-ray fluorescence or the method posted on the Commission web site to test for lead in metal for certification purposes.

E. No later than December 31, 2009, each manufacturer covered by the stay shall present a comprehensive plan to the Commission describing how and when it intends to reduce the lead exposure from each part described in paragraph D above whose measured lead content exceeds 300 parts per million. The manufacturer should include a discussion of any adverse safety impacts that could result from accelerating the estimated schedule. If some Bicycles or Related Products have been modified after January 28, 2009, to reduce the lead content of certain parts or to make certain parts inaccessible, the manufacturer should outline those changes in general terms and the dates such changes were made.

F. Manufacturers who have timely submitted both the report in paragraph D and the plan in paragraph E above, who need additional time to complete their plan prior to the expiration of the stay may seek an extension of the stay. They shall, no later than December 31, 2010, file a request with the Secretary of the Commission for an extension containing a revised timetable for the reduction of lead exposure from those parts. The report shall detail the

manufacturer's progress in reducing children's exposure to lead from each part containing more than 300 ppm, specifying what actions have been taken with regard to each affected part. The report will also explain why any parts that remain above 300 ppm have not been able to be made inaccessible, substituted with another material, or made with a complying level of lead.

G. Any report submitted under paragraph F shall also identify the Bicycles and Related Products by model that the manufacturer intends to produce on or after July 1, 2011. The manufacturer shall provide a listing of each component part that is expected to be used in the production if its lead content is expected to exceed 100 ppm and will be accessible to children. For each such part the manufacturer shall explain why it is not feasible to make the part inaccessible or why it is not technologically feasible to reduce the lead content to 100 ppm or lower.

H. While the stay is in effect for particular Bicycles and Related Products, the Office of Compliance shall not prosecute any person for any violation of laws administered by the Commission based on the lead content of any part of, or replacement part for, those Bicycles and Related Products to which the stay applies, including provisions relating to certification of compliance, reporting of noncompliances, or the sale, offering for sale, importation, or exportation.

I. While the stay is in effect for particular Bicycles and Related Products, the Commission will not refuse admission into the United States of such Bicycles and Related Products based on the lead content of any part of such Bicycles and Related Products to which the stay applies or any replacement part for such Bicycles and Related Products as described in paragraph C.

J. This stay does not apply to Bicycles and Related Products that are stockpiled by the manufacturer, as that term is defined by 15 U.S.C. 2058(g)(2), and stockpiling is strictly prohibited.

K. The Commission hereby delegates to the Assistant Executive Director, Office of Compliance and Field Operations, authority to implement the stay of enforcement as specified here and the authority to modify provisions in individual cases where necessary due to unique or unforeseen circumstances.

The stay in no way limits the Commission's ability to take action with regard to Bicycles and Related Products for other safety-related issues including, but not limited to, failure to comply with the ban on lead-containing paint.

Dated: June 25, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–15449 Filed 6–29–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: DoD; Office of the Assistant Secretary of Defense (Personnel and Readiness).

ACTION: Notice of meeting.

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 following Federal advisory committee meetings of the Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force) will take place:

Due to scheduling difficulties the Defense Task Force on Sexual Assault in the Military Services was unable to finalize its agenda in time to publish notice of its meetings in the **Federal Register** for the 15-calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

DATES: Monday, July 6, 2009; Tuesday, July 7, 2009; Wednesday, July 8, 2009; Wednesday, July 22, 2009; Thursday, July 23, 2009; and Friday, July 24, 2009. The time for all meetings is 8 a.m. to 4:30 p.m. Eastern Daylight Time (hereafter referred to as EDT).

ADDRESSES: Marymount Room, King Conference Room 204 and King Conference Room 205, Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Michael Molnar, Deputy to the Executive Director; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia, 22314; phone (888) 325–6640; fax (703) 325–6710; *michael.molnar@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: *Purpose of Meetings:* The purpose of these meetings is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the Military Services through briefings from, and discussion with, Task Force staff, subject-matter experts, document review, and preparation of the Task Force report.

Agenda:

Monday, July 6, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–8:15 a.m. Plan of the Day.
8:15 a.m.–9 a.m. Subcommittee Work.
9 a.m.–10:30 a.m. Department of Defense Sexual Assault Prevention and Response Data Collection and Reporting System Briefing.
10:30 a.m.–10:45 a.m. Break.
10:45 a.m.–12 p.m. Subcommittee Work.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

Tuesday, July 7, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Subcommittee Work.
9:30 a.m.–9:45 a.m. Break.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

Wednesday, July 8, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Subcommittee Work.
9:30 a.m.–9:45 a.m. Break.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

Wednesday, July 22, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Subcommittee Work.
9:30 a.m.–9:45 a.m. Break.
12 p.m.–1 p.m. Noon Meal.

1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

Thursday, July 23, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Subcommittee Work.
9:30 a.m.–9:45 a.m. Break.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

Friday, July 24, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Subcommittee Work.
9:30 a.m.–9:45 a.m. Break.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4 p.m. Subcommittee Work.
4 p.m.–4:20 p.m. Cross Check between Subcommittees.
4:20 p.m.–4:30 p.m. Wrap Up.

The public can view meeting updates at *http://www.dtic.mil/dtfsams.*

Public's Accessibility to the Meeting: These meetings are open to the public. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, these meetings are open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer: Colonel Cora M. Jackson-Chandler; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia, 22314; phone (888) 325–6640; fax (703) 325–6710; *cora.chandler@wso.whs.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a) (3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Task Force on Sexual Assault in the Military Services about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Task Force on Sexual Assault in the Military Services.

All written statements shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp.*

Written statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the listed address above no later than 5 p.m., EDT, Friday, July 3, 2009 . Written statements received after this date may not be provided to, or considered by, the Defense Task Force on Sexual Assault in the Military Services until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Task Force on Sexual Assault in the Military Services Co-Chairs and ensure they are provided to all members of the Defense Task Force on Sexual Assault in the Military Services before the meeting that is the subject of this notice.

Dated: June 25, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–15384 Filed 6–29–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0091]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on July 30, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 23, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.60

SYSTEM NAME:

Chaplain Care and Counseling Records (August 3, 2005, 70 FR 44581).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S125.10.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, home address and telephone number, religion, and details for which the individual sought counseling or assistance.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3547, Duties: Chaplains, assistance required of commanding officers; 10 U.S.C. 5142, Chaplain Corps and Chief of Chaplains.''

PURPOSE(S):

Delete entry and replace with ''To document spiritual counseling or assistance provided to individuals.''

* * * * *

STORAGE:

Delete entry and replace with ''Records may be stored on paper.''

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by individual's name.''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in locked cabinets

and are accessible only by the Chaplain.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

Requests should contain the subject individual's full name and current address.

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

Requests should contain the subject individual's full name and current address.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information is provided by the record subject.''

* * * * *

S125.10

SYSTEM NAME:

Chaplain Care and Counseling Record.

SYSTEM LOCATION:

Office of the Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received spiritual counseling, guidance, or ministration from the DLA Command Chaplain; individuals who have participated in Chaplain sponsored activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, home address and telephone number, religion, and details for which the individual sought counseling or assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3547, Duties: Chaplains, assistance required of commanding officers; 10 U.S.C. 5142, Chaplain Corps and Chief of Chaplains.

PURPOSE(S):

To document spiritual counseling or assistance provided to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 553a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 55a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are stored in locked cabinets and are accessible only by the Chaplain.

RETENTION AND DISPOSAL:

Information is retained in the system until superseded or no longer needed.

SYSTEM MANAGER AND ADDRESS:

Command Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name and address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name and address.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–15386 Filed 6–29–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

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 following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Friday, August 7, 2009.

3. *Time:* 8:30 a.m.–11:30 a.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Superintendent's Conference Room, Taylor Hall, West Point, NY.

5. *Purpose of the Meeting:* This is the 2009 Summer Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: Upcoming Events, USMAPS, Military Training and Instruction,

Residential Communities Initiative (RCI), Master Plan, Army Football, Suicide Awareness, and Class of 2013 update.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five 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.

FOR FURTHER INFORMATION CONTACT: Mail to: LTC Scot Ransbottom, (845) 938–4200. (fax 845–938–3214) or via e-mail: *scot.ransbottom@us.army.mil* or Ms. Joy A. Pasquazi, (845) 938–5078, *joy.pasquazi@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–15410 Filed 6–29–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0036]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice To Amend a System of Records.

SUMMARY: The Department of the Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 30, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Air Force Act Privacy Office, Air Force Privacy Act Office, Office of War fighting Integration and Chief Information Officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley (703) 696–6648.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 24, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF AETC B

SYSTEM NAME:

Graduate Training Integration Management Records. (February 10, 2009, 74 FR 6589).

CHANGES:

* * * * *

Delete system name and replace with: ''Graduate Training Integration Management System (GTIMS).''

* * * * *

F036 AF AETC B

Graduate Training Integration Management System (GTIMS).

SYSTEM LOCATION:

The Air Force headquarters database is located at HQ AETC/A3IS, Hangar 6, Suite 1, 1150 5th Street East, Randolph Air Force Base, TX 78150–4404.

The site training databases are located at:

325th Operational Support Squadron, Bldg. 164, Room 105, 841 Florida Ave., Tyndall Air Force Base, FL 32403–5552.

56th Operations Support Squadron, Room 122, 7324 N. Homer Dr., Luke AFB, AZ 85309–1661.

Doss Aviation, One William White Blvd., Room 120, Pueblo, CO 81001–1120.

23 FT Squadron, 58 Operations Group, Bldg. 6621, Room 1, Andrews Ave., Ft Rucker, AL 36362–3636.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students and cadre involved in the flight training operations to include: active duty Air Force, Navy and National Guard personnel and Reserves, Department of Defense (DoD) civilians, contractors and foreign national military.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, Social Security Number (SSN), address and telephone number, source of commission, education information to include university, dates of attendance, graduation degree, major and date and past training unit of assignment. Complete record of flying training including class number, section number, flying and academic courses completed; complete record of evaluations including grades on each phase of flight evaluations and overall flight evaluation performance in each category of training, flying hours; date graduated or eliminated with reasons for elimination and Training Review Board proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; AETCI 36–2205, Formal Aircrew Training administration and management; AETCI 36–2220, Academic Training; AETCI 36–2223, Flying Training Student Information Management and E.O.9397 (SSN).

PURPOSE:

Manages all aspects of Air Force graduate flight training. Provides scheduling of all resources to include students, instructors, classrooms, classroom equipment and resource files, aircrew training (simulator) devices, aircraft and airspace. Monitors student performance by source of entry, education level and minority status. Maintains data, tracks and provides performance evaluation and deficiency tracking of students; and training and qualifications of instructor pilots and other training cadre. Maintains training information and qualifications of graduates for follow-on training to Air National Guard/Air Force Reserve and other Air Force/Navy training units. Manages syllabi and evaluates training course content. Provides data for and documents proceedings in the event of Training Review Board actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: the DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name and Social Security Number (SSN).

SAFEGUARDS:

Computer databases are located in locked servers in locked rooms in flying training classroom/laboratory buildings on Air Force installations. All training facilities with system-accessible workstations are controlled during duty hours and secured after duty hours. Access to record, (database) data, by users (including students, training cadre, flight training managers, and system administrators) is controlled by Common Access Card (CAC) identification. Authorized access to specific data is controlled in accordance with user roles and permissions.

RETENTION AND DISPOSAL:

Air Education and Training Command (AETC) archive policy training records to include GTIMS computer databases are retained as active at least two years. Archiving records from the units' servers that are more than two years old will begin when the data is complete and correct, i.e., final Merit Assignment Selection System (MASS) is run and students are graduated and correctly dispositioned. HQ AETC/A3IS will maintain a complete GTIMS data base indefinitely.

GTIMS hardcopy reports such as student grade book and other paper reports generated for instructor, flight commander, etc., are destroyed one year after completion of training.

Training Review Board records are retained for one year. Hardcopy records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER AND ADDRESS:

Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, Suite 2, Randolph Air Force Base, TX 78150–4325.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, Suite 2, Randolph Air Force Base, TX 78150–5000.

Individuals should provide full name, Social Security Number (SSN), office or organization where currently assigned, if applicable, and current address and telephone number. The requester's signature should be certified/verfied by a notary public as below.

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to or visit the Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, Suite 2, Randolph Air Force Base, TX 78150–5000.

Individuals should provide full name, Social Security Number (SSN), office or organization where currently assigned, if applicable, and current address and telephone number. The requester's signature should be certified/verfied by a notary as below.

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; students' grades rendered by Computer Aided Instruction (CAI) tests and instructor grades from observed training events.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–15385 Filed 6–29–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), section 5018.

DATES: The agency must receive completed applications no later than July 31, 2009.

ADDRESSES: Mail completed applications to U.S. Army Corps of Engineers, Omaha District (Attn: MRRIC), 1616 Capitol Avenue, Omaha, NE 68102–4901 or e-mail completed applications to *info@mrric.org*. Please put ''MRRIC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Mary S. Roth, 402–995–2919.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and

Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *http://www.MRRIC.org*.

Purpose and Scope of the Committee. The duties of MRRIC cover two areas:

1. The Committee provides guidance to the Corps, and affected Federal agencies, State agencies, or Native American Indian Tribes on a study of the Missouri River and its tributaries to determine the actions required to mitigate losses of aquatic and terrestrial habitat, to recover federally listed species protected under the Endangered Species Act, and to restore the river's ecosystem to prevent further declines among other native species. This study is identified in section 5018(a) of the WRDA. It will result in a single, comprehensive plan to guide the implementation of mitigation, recovery, and restoration activities in the Missouri River Basin. This plan is referred to as the Missouri River Ecosystem Restoration Plan (MRERP). For more information about the MRERP go to *http://www.MRERP.org*.

2. The MRRIC also provides guidance to the Corps with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *http://www.MoRiverRecovery.org*.

3. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. In accordance with the Charter for the MRRIC, stakeholder membership is limited to 28 people, with each member having an alternate. Members and alternates must be able to demonstrate that they meet the definition of ''stakeholder'' found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Navigation;
b. Irrigation;
c. Water Quality;
d. Waterways Industries;
e. Major Tributaries;
f. Thermal Power;
g. Hydropower;
h. Local Government; and
i. Environmental/Conservation Organizations.

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the ''Streamlined Process for Existing Members'' portion of the document Process for Filling MRRIC Stakeholder Vacancies (*http://www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the Federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee will not be reimbursed by the Federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities and are not employees of Federal agencies, tribes, or State agencies, may apply for stakeholder membership on the MRRIC. Applications for stakeholder membership may be obtained electronically at *http://www.MRRIC.org*. Applications may be e-mailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person wishes to represent;

2. A written statement describing how the applicant meets the criteria for membership (described below) and how their contributions will fulfill the roles and responsibilities of MRRIC;

3. Evidence that demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 31, 2009, at the location indicated (see **ADDRESSES**). Full consideration will be given to all complete applications received by the specified due date.

Persons wishing to apply as stakeholder members are strongly encouraged to identify an appropriate individual to serve as his/her alternate. Alternates should apply with the individual seeking membership in the same interest area. Alternates must apply in the same manner as stakeholder members and should include a recommendation from a member applicant as well as the interest group(s) they represent.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the Process for Filling MRRIC Stakeholder Vacancies document (*http://www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.

• Demonstration of an established communication network to keep constituents informed and efficiently seek their input when needed.

• Ability to contribute to the overall balance of representation on MRRIC.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Mary S. Roth,

Project Manager for the Missouri River Recovery Implementation Committee (MRRIC), U.S. Army Corps of Engineers, Omaha District, 1616 Capitol Avenue, Omaha, NE 68102–4901.

[FR Doc. E9–15411 Filed 6–29–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Safe and Drug-Free Schools and Communities (SDFSC) Programs for Native Hawaiians; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2008 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.186C.

Dates:

Applications Available: June 30, 2009.

Deadline for Transmittal of Applications: July 30, 2009.

Deadline for Intergovernmental Review: September 28, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: SDFSC Programs for Native Hawaiians awards grants to organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs to prevent or reduce violence, the use, possession and distribution of illegal drugs, or delinquency.

Note: On January 22, 2009, we published a notice in the **Federal Register** inviting applications for a competition, using FY 2008 funds, under the SDFSC Programs for Native Hawaiians. (A copy of that notice is available at: *http://www.ed.gov/legislation/FedRegister/announcements/2009-1/012209c.html.)* None of the applications we received for the SDFSCA Native Hawaiians competition announced in that notice was successful. Accordingly, through this notice, we are inviting applications for another competition using the following priority.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from sections 4115(b)(1)(C)(i) and 4117(c)(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7115 and 7117).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects to plan, conduct, and administer programs for Native Hawaiian youth to prevent or reduce violence, the use, possession and distribution of illegal drugs, or delinquency.

Definition: The following definition is from section 4117(b) of the ESEA and applies to this competition:

Native Hawaiian means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Program Authority: 20 U.S.C. 7117.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $579,518.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2009 and in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$300,000.

Estimated Average Size of Awards: $289,759.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiians.

Note: In accordance with section 4117(b) of the ESEA, *Native Hawaiian* means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* a. *Equitable Participation by Private School Children and Teachers:* Section 9501 of the (ESEA) (20 U.S.C. 7881), requires that State educational agencies (SEAs), local educational agencies (LEAs), or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, applicants must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an applicant must consult with private school officials on preventing or reducing violence, the use, possession and distribution of illegal drugs, or delinquency, and related issues for private schools in the applicant's service area.

b. *Principles of Effectiveness:* Programs, activities, and strategies implemented with funds awarded under this competition must meet the requirements of the principles of effectiveness described in section 4115(a) of the ESEA (20 U.S.C. 7115(a)).

c. *Maintenance of Effort:* Section 9521 of the ESEA requires that LEAs may receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the program office. To obtain a copy via the Internet, use one of the following addresses: *http://www.ed.gov/fund/grant/apply/grantapps/index.html* or *http://www.ed.gov/programs/dvpnathawaii/applicant.html.* To obtain a hard copy from the program office,

contact: Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., room 10073, Potomac Center Plaza (PCP), Washington, DC 20202–4260. Telephone: (202) 245–7893 or by e-mail: *pat.rattler@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: June 30, 2009.

Deadline for Transmittal of Applications: July 30, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 28, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be

sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.186C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.186C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditures information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of SDFSC Programs for Native Hawaiians:

(1) The percentage of students annually served by the Grant who show a decrease in violent or disruptive behavior, or delinquency; and

(2) The percentage of students annually served by the Grant who show a decrease in the use of illegal drugs.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide in its annual and final performance reports data about its progress in meeting these measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 10073, Potomac Center Plaza (PCP), Washington, DC 20202–4260. Telephone: (202) 245–7893 or by e-mail: *pat.rattler@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 24, 2009.

William Modzeleski,

Acting Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E9–15489 Filed 6–29–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 15, 2009, 8 a.m. to 12 p.m. (EST).

ADDRESSES: TMS, Inc., 955 L'Enfant Plaza North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, subtitle J, section 999D.

Tentative Agenda:

7:30 a.m.—Registration.

8 a.m.–11:45 a.m.—Welcome and Introduction, Opening Remarks, Presentation on Status of DOE Oil and Natural Gas Program, section 999 Planning Process, Status of Ultra-Deepwater Program, Overview of Response to section 999D Advisory Committee Recommendations, and Facilitated Discussions.

11:45 a.m.–12 p.m. Public Comments.

12 p.m.—Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 25, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–15400 Filed 6–29–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–166]

California Department Water Resources; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 23, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 2100–166.

c. *Date Filed:* May 18, 2009.

d. *Applicant:* California Department Water Resources (DWR).

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* The project is located on the Feather River in Butte County near Oroville, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bill Cochran, Chief of Coordination Branch at 1416 Ninth Street, P.O. Box 94236–0001. Phone: (530) 534–2376.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov*.

Deadline for filing comments and or motions: July 24, 2009.

j. Deadline for filing motions to intervene and protests, comments, and recommendations are due 30 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice 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.

k. *Description of the Application:* The DWR, licensee for the Feather River Hydroelectric Project, has filed a request for authorization to conduct an annual bicycle event organized by the Lake Oroville Bicycle Organization, known as the ''24 Hour of Gold Bike Race''. This year's event would be conducted on October 24 and 25, 2009, and would occur in the Loafer Creek Recreation Area of the Feather River Hydroelectric Project on trails that are designated for hiking and equestrian use. The trail being used would be open to mountain bike use only for 24 hours starting at 10 a.m. on the first day.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 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.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15381 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–432–000]

Tricor Ten Section Hub, LLC; Notice of Application

June 23, 2009.

Take notice that on June 12, 2009, Tricor Ten Section Hub, LLC (Tricor), 4675 MacArthur Court, Suite 670, Newport Beach, California 92660, filed in Docket Number CP09–432–000, pursuant to section 7(c) of the Natural Gas Act (NGA), an application for a certificate of public convenience and necessity to construct, own, and operate the Ten Section Storage Project, located in Kern County, California. Additionally, Tricor requests a blanket certificate authorizing it to engage in certain self-implementing activities under part 157, subpart F, and a blanket certificate under part 284, subpart G, authorizing Tricor to provide open access, non-discriminatory firm and interruptible natural gas storage services. Tricor also requests authorization to charge market-based rates for its proposed storage services and approval of its *Pro Forma* Gas Tariff. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to counsel for Tricor, Michael J. Manning or Letitia W. McKoy, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004; phone (202) 662–4550 (Michael) or (202) 662–4668 (Letitia); fax (202) 662–4643.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15382 Filed 6–29–09; 8:45 am]

P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–10–002]

Michigan Consolidated Gas Company; Notice of Compliance Filing

June 23, 2009.

Take notice that on June 12, 2009, Michigan Consolidated Gas Company filed an Operating Statement pursuant to section 284.123(e) of the Commission's regulations and to comply with the Commission's letter order issued on May 21, 2009, in Docket Nos. PR09–10–000 and PR09–10–001.

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 the date as indicated below. 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.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15379 Filed 6–29–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–760–000]

Red Shield Acquisition, LLC; Notice of Filing

June 23, 2009.

Take notice that on June 16, 2009, Red Shield Acquisition, LLC (RSA) filed a letter of clarification to its February 25, 2009 filing (February 25th filing), stating that RSA also requests, in addition to the other relief sought in its February 25th filing, a waiver of Order 888, including the requirement to file an Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15380 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–53–001]

Easton Utilities Commission; Notice of Filing

June 24, 2009.

Take notice that on June 22, 2009, Easton Utilities Commission filed a Supplemental Prepared Direct Testimony by John E. Hines III, P.E. designated as Exhibit No. EUC–9, supporting information designated as Exhibit No. EUC–10, and its Rate Schedule for Reactive Service, designated at Rate Schedule No. 1, Original Sheet No. 1, to supplement its Petition for Declaratory Order filed with the Commission on May 6, 2009 under Docket No. EL09–53–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15458 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1323–000]

Lost Lakes Wind Farm LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 24, 2009.

This is a supplemental notice in the above-referenced proceeding of Lost Lakes Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 14, 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. E9–15455 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1322–000]

Meadow Lake Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 24, 2009.

This is a supplemental notice in the above-referenced proceeding of Meadow Lake Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 14, 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. E9–15453 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1321–000]

Blue Canyon Wind Power V, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 24, 2009.

This is a supplemental notice in the above-referenced proceeding of Blue Canyon Wind V, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability, is July 14, 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. E9–15452 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1320–000]

Blackstone Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 24, 2009.

This is a supplemental notice in the above-referenced proceeding of Blackstone Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 14, 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. E9–15451 Filed 6–29–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

June 24, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary

link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	File date	Presenter or requester
1. P–2210–169	6–19–09	Allan Creamer.[1]
2. P–2210–169	6–11–09	Jeffrey Browning.[2]
3. P–13283–000 ...	6–11–09	Hon. David Vitter.

[1] Record of telephone communication.
[2] E-mail correspondence re: exchange of information with Virginia DCR.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–15450 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–011, Docket No. ER06–250–000, Docket No. ER05–294–000]

Electric Quarterly Reports; Knedergy, LLC and Westbank Energy Capital, LLC; Notice of Revocation of Market-Based Rate Tariff

June 25, 2009.

On May 21, 2009, the Commission issued an order announcing its intent to revoke the market-based rate authority of the above captioned public utilities, which had failed to file their required Electric Quarterly Reports.[1] The Commission provided the utilities Ffifteen days in which to file their overdue Electric Quarterly Reports or face revocation of their market-based rate tariffs.

In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[2]

In the May 21 Order, the Commission directed Knedergy, LLC and Westbank Energy Capital, LLC to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[3]

The time period for compliance with the May 21 Order has elapsed. The companies identified in the May 21 Order (Knedergy, LLC and Westbank Energy Capital, LLC) have failed to file their delinquent Electric Quarterly Reports.

The Commission hereby revokes the market-based rate authority and terminates the electric market-based rate tariffs of the above captioned public utilities.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–15425 Filed 6–29–09; 8:45 am]

BILLING CODE P

[1] *Electric Quarterly Reports*, 127 FERC ¶ 61,148 (2009) (May 21 Order).

[2] *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31,043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[3] May 21 Order at Ordering Paragraph A.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–3]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held July 21 and 22, 2009 at the USEPA East Building, Room 1117A, 1201 Constitution Ave., Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet July 21 and 22, 2009.

ADDRESSES: USEPA East Building, Room 1117A.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2191, *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC will meet on Tuesday, July 21 from 8:30 a.m. to 5:30 p.m., and Wednesday, July 21 from 8:30 a.m. to 12:30 p.m. Agenda items include a discussion and a review of recommendations for the next edition of the America's Children and the Environment report, discussion on environmental health disparities, chemical management and air pollution.

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov.* To request accommodation of a disability, please contact Martha Berger, preferably at least 10 days prior to the meeting.

Dated: June 22, 2009.

Martha Berger,

Designated Federal Official.

CHPAC Draft Agenda

Tuesday, July 21, 2009

9–9:30 a.m.—Welcome, Introductions, Review Meeting Agenda, Review CHPAC Role and Group Expectations;

9:30–10 a.m.—Highlights of Recent OCHP Activities;

10–11 a.m.—ACE Indicators Draft Report and Letter;

11–11:15 a.m.—Break;

11:15 a.m.–12 p.m.—Air Quality and Children's Health Update;

12–1:15 p.m.—Lunch (*on your own*);

1:15–2:45 p.m.—Chemicals Management and Children's Health Panel;

2:45–3 p.m.—Break;

3–3:30 p.m.—Air Toxics Monitoring Initiative Update;

3:30–4 p.m.—Report From Climate Change Task Group;

4–4:45 p.m.—ACE Indicators Report and Draft Letter;

4:45 p.m.—Public Comment;

5 p.m.—Adjourn.

Wednesday, July 22, 2009

9–9:15 a.m.—Check in and Agenda Review;

9:15–9:45 a.m.—Report from School Siting Guidelines Task Group;

9:45–10:45 a.m.—ACE Indicators Report and Recommendation Letter;

10:45–11 a.m.—Break;

11 a.m.–12 p.m.—Children's Health and Environmental Health Disparities;

12–12:30 p.m.—Review Discussions, Decisions, and Possible Next Steps;

12:30 p.m.—Adjourn.

[FR Doc. E9–15421 Filed 6–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–5]

Proposed CERCLA Section 122(g) Administrative Agreement for De Minimis Settlement for the Consolidated Iron and Metal Co. Superfund Site, City of Newburgh, Orange County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed *de minimis* administrative agreement pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g), between EPA and the Town of Rhinebeck (''the Town''), Dutchess County, New York, pertaining to the Consolidated Iron and Metal Co. Superfund Site (''Site'') located in the City of Newburgh, Orange County, New York. Under the settlement, the Town will pay $49,907.23 to the EPA Hazardous Substance Superfund Consolidated Iron and Metal Co. Site Special Account, which is considered to be its fair share of past and future cleanup costs, plus a ''premium'' for uncertainties associated with the Site. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, and protection from contribution actions or claims as provided by sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). EPA will receive written comments relating to the settlement for thirty (30) days following publication of this notice. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before July 30, 2009.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Consolidated Iron and Metal Co. Superfund Site, Index No. CERCLA–02–2009–2001. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, EPA Region 2, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3177.

Dated: June 17, 2009.

Walter Mugdan,

Director, Emergency and Remedial Response Division, Region 2.

[FR Doc. E9–15419 Filed 6–29–09; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–8]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by the Alliance of Automobile Manufacturers (''Alliance'') in the United States Court of Appeals for the District of Columbia Circuit: *Alliance of Automobile Manufacturers* v. *EPA,* No. 08–1109 (DC Cir.). On or about March 10, 2008, the Alliance filed a petition for review challenging regulations promulgated by EPA in a final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, and Gasoline Dispensing Facilities,'' 73 FR 1916 (Jan. 10, 2008), published at 40 CFR part 63, subparts BBBBBB and CCCCCC (the ''Gasoline Distribution NESHAP''). Under the terms of the proposed settlement agreement, EPA will sign and submit for publication in the **Federal Register** a notice of proposed rulemaking to amend the Gasoline Distribution NESHAP that contains amendments that are substantially the same in substance as set forth in Attachment A to this Agreement as expeditiously as practicable after entry of this Agreement. If EPA signs and submits for publication in the **Federal Register** a notice of final rulemaking to amend the Gasoline Distribution NESHAP that contains amendments that are substantially the same in substance as set forth in Attachment A to this Agreement, the Alliance and EPA will file a joint motion for dismissal with prejudice in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure.

DATES: Written comments on the proposed settlement agreement must be received by *July 30, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0471, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1272; fax number (202) 564–5603; e-mail address: *stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would resolve a petition for review filed by the Alliance challenging regulations promulgated by EPA in a final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, and Gasoline Dispensing Facilities,'' 73 FR 1916 (Jan. 10, 2008), published at 40 CFR part 63, subparts BBBBBB and CCCCCC (the ''Gasoline Distribution NESHAP''). Specifically, the Alliance challenged the Gasoline Distribution NESHAP by raising three issues regarding: (1) Allegedly duplicative requirements under

Subparts BBBBBB and CCCCCC; (2) application of the Gasoline Distribution NESHAP to engine testing facilities; and (3) application of the Gasoline Distribution NESHAP to tanks solely used to fuel emergency generators and fire pumps. Under the terms of the proposed settlement agreement, EPA will sign and submit for publication in the **Federal Register** a notice of proposed rulemaking to amend the Gasoline Distribution NESHAP that contains amendments that are substantially the same in substance as set forth in Attachment A to this Agreement as expeditiously as practicable after entry of this Agreement. If EPA signs and submits for publication in the **Federal Register** a notice of final rulemaking to amend the Gasoline Distribution NESHAP that contains amendments that are substantially the same in substance as set forth in Attachment A to this Agreement, the Alliance and EPA will file a joint motion for dismissal with prejudice in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0471) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 24, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–15418 Filed 6–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–6]

Science Advisory Board Staff Office; Notification of Request for Nomination of Experts Clean Air Scientific Advisory Committee (CASAC) Carbon Monoxide Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is soliciting nominations of experts to augment the EPA's Clean Air Scientific Advisory Committee (CASAC) Carbon Monoxide Review Panel.

DATES: Nominations should be submitted by July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information regarding this request may contact Dr. Ellen Rubin, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9975 or e-mail at *rubin.ellen@epa.gov.* General

information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

EPA is in the process of reviewing and revising the NAAQS for Carbon Monoxide. Accordingly, a CASAC CO Review Panel was established in 2008 and conducted a consultation on EPA's Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide (August 2008) and a review of the Integrated Science Assessment for Carbon Monoxide—First External Review Draft (March, 2009). The CASAC reports are available on the CASAC Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.*

The SAB staff office is seeking nominations of experts to augment the CASAC CO Panel membership (see membership URL at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/Carbon%20Monoxide%20Review%20Panel*) in the area of risk assessment and epidemiology.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for consideration for membership on the CO Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Web site at *http://www.epa.gov/sab* directly via the nomination form, following the directions for Nominating Experts to Advisory Panels and Ad Hoc committees carefully. To be considered, nominations should include all of the information required on the associated forms. Anyone unable to submit nominations using the electronic form and who has any questions concerning the nomination process may contact Dr. Ellen Rubin, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than July 31, 2009.

To be considered, all nominations should include: A current curriculum vitae (C.V.) that provides the nominee's background, qualifications, research expertise and relevant publications for service on the Panel; and a brief biographical sketch (''biosketch'').

The biosketch should be no longer than two paragraphs and should contain the following information for the nominee: (a) Current professional affiliations and positions held; (b) educational background, especially advanced degrees, including when and from which institutions these were granted; (c) area(s) of expertise, and research activities and interests relevant to the Panel; and (d) leadership positions in national associations or professional publications or other significant distinctions and service on other advisory committees or professional societies, especially those associated with issues under discussion in this review.

The Web form will also request information about sources of recent (*i.e.,* within the preceding two years) grant and/or other contract support, from government, industry, academia, *etc.,* including the topic area of the funded activity. Please note that even negative responsive information (*e.g.,* no recent grant or contract funding) should be indicated on the biosketch (by ''N/A'' or ''None''). Incomplete biosketches will not be considered. The EPA SAB Staff Office will acknowledge receipt of nominations.

The scientific expertise and credentials of nominees received in reply to this notice will be reviewed for demonstrative experience in the disciplines sought for the CO Review Panel. Qualified nominees will be included in a smaller subset (known as the ''Short List''). The Short List will be posted on the SAB Web site at *http://www.epa.gov/sab* and will include, for each candidate, the nominee's name and their biosketch. Public comments on the Short List will be accepted for a minimum of 21 calendar days. During this comment period, the public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. The SAB Staff Office will consider public comments, information provided by candidates, and background information independently-gathered by the SAB Staff Office on each candidate (*e.g.,* financial disclosure information, and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating Short List candidates for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working on committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, *etc.*

Prospective candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: June 23, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–15414 Filed 6–29–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 09–1393]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 24, 2009, the Commission released a public notice announcing the July 16, 2009 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, July 16, 2009, 9:30 a.m.

ADDRESSES: Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–C162, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 24, 2009.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, July 16, 2009, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. People with Disabilities: 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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, July 16, 2009, 9:30 a.m.*

1. Announcements and Recent News.
2. Approval of Transcript.

—Meeting of February 22, 2008.

3. Report of the North American Numbering Plan Administrator (NANPA).
4. Report of the National Thousands Block Pooling Administrator (PA).
5. Report of North American Numbering Portability Management LLC (NAPM LLC).
6. Report of the Numbering Oversight Working Group.
7. Status of the Industry Numbering Committee (INC) activities.
8. Report from the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
9. Report of the Billing & Collection Working Group (B&C WG).
10. Report of the Future of Numbering Working Group (FoN WG).
11. Report of the Local Number Portability Administration (LNPA) Working Group.
12. Special Presentations and Discussion Related to Implementation of LNP Order.
13. Summary of Action Items.
14. Public Comments and Participation (5 minutes per speaker).
15. Other Business.

Adjourn no later than 5 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Deborah Blue,

Assistant to the Designated Federal Officer, Wireline Competition Bureau.

[FR Doc. E9–15424 Filed 6–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Thursday, July 2, 2009

June 25, 2009.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 2, 2009, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

The Meeting also will include a presentation on the status of the Commission's process for developing a National Broadband Plan.

Item No.	Bureau	Subject
1	Office of Engineering and Technology	Title: Amendment of the Commission's Rules to Provide Spectrum for the Operation of Medical Body Area Networks (ET Docket No. 08–59) Summary: The Commission will consider a Notice of Proposed Rulemaking to allocate spectrum and establish service and technical rules for the operation of Medical Body Area Networks to monitor patients' physiological data.
2	Media	Title: Amendment of Service and Eligibility Rules for FM Broadcast Stations (MB Docket No. 07–172; RM–11338) Summary: The Commission will consider a Report and Order concerning changes in the FM translator rules to allow AM broadcast stations to rebroadcast their signals on eligible FM translator stations.
3	Wireless Tele-Communications	Title: Amendment of Part 101 of the Commission's Rules to Accommodate 30 Megahertz Channels in the 6525–6875 MHz Band (RM–11417), *et al.* Summary: The Commission will consider a Notice of Proposed Rulemaking addressing whether to provide licensees with authority to operate on channels with bandwidths up to 30 megahertz in the Upper 6 GHz band and whether to extend conditional authority to two additional channel pairs in the 23 GHz band, as well as an Order addressing a related waiver request.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable

accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. E9–15540 Filed 6–26–09; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 11:30 a.m. on Thursday, July 2, 2009, to consider the following matter:

Discussion Agenda

Memorandum and resolution re: Policy on Investment in, or Acquisition of, Failing Insured Depository Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: June 25, 2009.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–15505 Filed 6–29–09; 8:45 am]

BILLING CODE P

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, July 6, 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, June 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–15558 Filed 6–26–09; 4:15 pm]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. The PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania; to acquire the lesser of $75 million or 5.4 percent of the voting shares of First Niagara Financial Group, Inc., Lockport, NY, and thereby indirectly acquire First Niagara Bank, Lockport, New York, and engage in operating a savings association pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–15391 Filed 6–29–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0280]

General Services Administration Acquisition Regulation; Submission for OMB Review; Tax Adjustment Clause 552.270–30

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding tax adjustments under leasehold acquisitions. A request for public comments was published at 73 FR 77698, December 19, 2008. No comments were received.

This collection requires contractors to submit information to the Government to substantiate an increase or decrease in real estate taxes under a leasehold acquisition so that the Government can make tax adjustments as necessary to the leasehold acquisition. Information collected under this authority is necessary to assess proper tax adjustments against each leasehold acquisition.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, at telephone (202) 501–3221, or via e-mail to *Edward.chambers@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0280, Tax Adjustment Clause 552.270–30, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision supply, service, and leasehold acquisitions. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments, measure success in meeting program objectives, or adjust acquisition requirements. Leasehold acquisitions provide for real estate tax adjustments due to changes in real estate taxes on land and buildings occupied by the Government. In a leasehold acquisition, the lessor shall provide the following information regarding real estate taxes: (1) Any notice which may affect the valuation of land and buildings covered by this lease for real estate tax purposes; (2) Any notice of a tax credit or tax refund related to land and buildings covered by this lease; and (3) Each tax bill related to land and building covered by this lease. The lessor is also required to provide the contracting officer a proper invoice including evidence of payment to receive the tax adjustment. Depending on the leasehold acquisition, the tax adjustment can result in either the lessor receiving a credit or the Government receiving a credit.

B. Annual Reporting Burden

Respondents: 7,041.
Responses per Respondent: 1.
Total Responses: 7,041.
Hours per Response: 6.
Total Burden Hours: 42,246.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0280, Tax Adjustment Clause 552.270–30, in all correspondence.

Dated: June 23, 2009.

Al Matera,

Director, Contract Policy Division.

[FR Doc. E9–15415 Filed 6–29–09; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274]

Public Buildings Service; Information Collection; Art-in-Architecture Program National Artist Registry

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the Art-in-Architecture Program National Artist Registry form. The clearance currently expires on July 31, 2009.

The Art-in-Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator Bernard L. Boudin who had served on the Ad Hoc Committee on Federal Office Space in 1961–1962.

The program has been modified over the years, most recently in 1996 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One-half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: Whether this collection of information is necessary 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 to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Harrison, Public Buildings Service, Office of the Chief Architect, Art-in-Architecture Program, Room 3341, 1800 F Street, NW., Washington,

DC 20405, at telephone (202) 501–1812 or via e-mail to *susan.harrison@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art-in-Architecture Program actively seeks to commission works from the full spectrum of American artists and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art-in-Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360.
Responses per Respondent: 1.
Hours per Response: .25.
Total Burden Hours: 90.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry, in all correspondence.

Dated: June 24, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–15420 Filed 6–29–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0302; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Medical Reserve Corps Unit Profile and Reports (Extension)—OMB No. 0990–0302—Office of Public Health and Science/Office of the Surgeon General/Office of the Civilian Volunteer Medical Reserve Corps (OPHS/OSG/OCVMRC).

Abstract: Medical Reserve Corps units are currently located in over 800 communities across the United States, and represent a resource of more than 170,000 volunteers. In order to continue supporting the MRC units in communities across the United State, and to continue planning for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activities is needed by the Office of the Civilian Volunteer Medical Reserve Corps (OCVMRC). MRC Unit Leaders are asked to update this information on the MRC Web site at least quarterly, and to participate in a Technical Assistance Assessment at least annually. The MRC unit data collected has not changed. This OMB extension request is for 3 years.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
MRC Unit Leader	803	6	1.0	4,818

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–15388 Filed 6–29–09; 8:45 am]

BILLING CODE 4150–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees for the Standard Oil Development Company in Linden, New Jersey, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 18, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All AWE employees of the Standard Oil Development Company in Linden, New Jersey, during the period from August 13, 1942 through December 31, 1945, while working for a number of work days aggregating at least 250 work days, either solely under this employment or in

combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation will become effective on July 18, 2009, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–15396 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees for Area IV of the Santa Susana Field Laboratory, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 18, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy (DOE), its predecessor agencies, and DOE contractors and subcontractors who worked in any area of Area IV of the Santa Susana Field Laboratory for a number of work days aggregating at least 250 work days from January 1, 1955 through December 31, 1958, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation will become effective on July 18, 2009, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–15397 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board; Notification of a Public Teleconference

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public teleconference. The meeting is open to the public.

DATES: The NBSB will hold a public teleconference on July 17, 2009. The teleconference will be held from 12 p.m. to 2 p.m. EDT.

ADDRESSES: The conference will be conducted by phone. Public Conference Call-in Number is available by emailing *NBSB@hhs.gov.* Participants should call in 15 minutes prior to the call and will be asked to provide their name, title, and organization.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference should contact *NBSB@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

Background: The purpose of the July 17, 2009 teleconference is for the Board to learn about and comment on the findings from the June 18–19, 2009 H1N1 Countermeasures Strategy and Decision Making Forum hosted by the Pandemic Influenza Working Group of the National Biodefense Science Board. The public teleconference is being convened to assure that the public is given the opportunity to hear the deliberations and to provide comments on the findings of the proposed report. There will be time for members of the public to present their comments to the Board on this subject matter.

Availability of Materials: The meeting agenda, report, and other materials will be posted on the NBSB Web site at *http://www.hhs.gov/aspr/omsph/nbsb/index.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the NBSB to consider. All written comments must be received prior to July 10, 2009 and should be sent by e-mail to *NBSB@hhs.gov* with ''NBSB Public Comment'' as the subject line or mailed to Leigh Sawyer, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20447.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public NBSB teleconference will be limited to three minutes per speaker, with no more than a total of 20 minutes for all speakers. To be placed on the public participant list, you should notify the operator when you enter the call-in number.

Dated: June 24, 2009.

William C. Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9–15441 Filed 6–29–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Building an Implementation Toolset for E-Prescribing.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on April 24th, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by July 30, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Building an Implementation Toolset for E-Prescribing''

AHRQ proposes to develop and test an electronic prescribing (e-prescribing) toolset to provide information and tools of sufficient detail to act as a ''how-to guide'' for implementing e-prescribing across various organizational settings.

The current system of prescribing and dispensing medications in the United States poses widespread safety and efficiency problems. E-prescribing systems have the potential to avert some of the more than 2 million adverse drug events (ADEs) annually, of which 130,000 are life threatening. E-prescribing also has enormous potential to create savings in health care costs, both through reducing ADEs and through more efficient work processes of prescribers and pharmacists. One recent study estimated the potential savings at $27 billion per year in the United States. [Johnston D, Pan E, Middleton B, Walker J, Bates DW. The value of computerized provider order entry in ambulatory settings. 2003 [cited 2003/12/10]. Available from: *http://www.citl.org/research/ACPOE_Executive_Preview.pdf.*]

The Medicare Prescription Drug Improvement and Modernization Act (MMA) of 2003, Public Law 108–173, provided that Medicare Part D sponsors are required to establish electronic prescription drug programs to provide for electronic transmittal of certain information to the prescribing provider and dispensing pharmacy and the dispenser. There is no requirement that prescribers or dispensers implement e-prescribing, but those who do electronically transmit prescription and certain other prescription-related information for Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals, either directly or through an intermediary, are required to comply with any applicable final standards that are in effect.

However, adoption of e-prescribing technology remains limited. On the surface, e-prescribing involves getting a prescription from point A to point B. In reality, the complexity of e-prescribing reflects all aspects of the process from appropriate prescribing, through dispensing, to correct patient use.

Much current work has been on the adoption of technical standards that establish a common language, contain technical specifications, and provide other specific criteria designed to be used consistently as rules or definitions. While standards are a necessary foundation for e-prescribing systems, they are insufficient in themselves to insure a successful implementation. Of equal importance to successful e-prescribing implementations are appropriate workflows and sustainable commitment from the various organizations that must participate in such a system.

This Accelerating Change and Transformation in Organizations and Networks (ACTION) project will produce a toolset to help a diverse range of provider organizations, from small independent offices to large medical groups to ''safety net'' clinics, to adopt e-prescribing systems and use them effectively in ways that advance the organization's goals. By enabling the greater adoption of e-prescribing systems that are effective in improving safety, quality and reducing prescription drug costs, the project will advance each of the priorities embodied in AHRQ's mission, which is to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

This work is being conducted by the RAND Corporation under AHRQ ACTION contract HHSA290200600017, Task Order #4, period of performance—8/1/08–1/31/10. It is being conducted pursuant to AHRQ's statutory authority to conduct research and evaluations (1) on health care and systems for the delivery of such care, including activities with respect to health care technologies, facilities and equipment, 42 U.S.C. 299a(a)(5), and (2) to advance training for health care practitioners and researchers in the use of information systems. 42 U.S.C. 299b–3(a)(2).

Method of Collection

In order to evaluate the draft toolset's usability and usefulness, we will pilot test the toolset by studying its effects among 6 practices that are attempting to implement e-prescribing for the first time. Field researchers will visit each practice before and after the e-prescribing implementation effort to conduct semi-structured interviews and observations of work processes. Finally, selected members of the practices will be surveyed via a Web-based instrument regarding the effort's success and the degree to which elements of the toolset were helpful.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this project. Pre-test and post-test interviews will be conducted with 3 physicians, 3 nurses or clinical support staff and 3 other staff from each of the 6 test sites. The pre-test and post-test observations will involve no more than 1 physician, 1 nurse or clinical support staff and 2 other staff from each of the 6 test sites. Eight physicians from each of the 6 test sites will complete the physician survey and 12 other staff from each site will complete the other staff survey. The total annual burden is estimated to be 186 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this project. The total cost burden is estimated to be $8,297.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of sites	Number of responses per site	Hours per response	Total burden hours
Pre-Test Interviews and On-Site Observations				
Pre-test interview guide	6	9	1	54
Pre-test on-site observation guide	6	4	15/60	6
Post-Test Interviews and On-Site Observations				
Post-test interview guide	6	9	1	54
Post-test on-site observation guide	6	4	30/60	12
Web-Based Survey				
Physician questionnaire	6	8	30/60	24
Other staff questionnaire	6	12	30/60	36
Total	36	na	na	186

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of sites	Total burden hours	Average hourly wage rate*	Total cost burden
Pre-Test Interviews and On-Site Observations				
Pre-test interview guide	6	54	$41.79	$2,257
Pre-test on-site observation guide	6	6	41.79	251
Post-Test Interviews				
Post-test interview guide	6	54	41.79	2,257
Post-test on-site observation guide	6	12	41.79	501
Web-Based Survey				
Physician questionnaire	6	24	79.33	1,904
Other staff questionnaire	6	36	31.31	1,127
Total	36	186	na	8,297

*Based upon the national average hourly wages for physicians and surgeons, all others (29–1069; $79.33), registered nurses (29–1111; $31.31), and health care support workers, all others (31–9099; $14.74), National Compensation Survey: Occupational wages in the United States May 2008, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annual costs of this project. Since data collection will not exceed one year, the total and annual costs are the same. The total cost is estimated to be $119,976.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST

Cost component	Total cost	Annualized cost
Instrument Development	$12,533	$12,533
Data Collection Activities	33,422	33,422
Data Processing and Analysis	16,711	16,711
Report Preparation/Publication	16,711	16,711
Project Management	4,178	4,178
Overhead	36,421	36,421
Total	119,976	119,976

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 22, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–15086 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Health IT Community Tracking Study 2009.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 31, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Health IT Community Tracking Study 2009

Electronic prescribing (e-prescribing) is a central focus of efforts to promote health information technology (IT) and is of particular interest to AHRQ because of its potential to improve patient safety by reducing medication errors. Despite many public- and private-sector initiatives to support e-prescribing, to date, physician adoption and use has been limited (Friedman, Schueth and Bell 2009). Recently, section 132 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), Public Law 110–275, authorized a new incentive program for eligible individual providers who are successful e-prescribers. In addition, section 4101 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, provides incentives for meaningful use of electronic health record technology, which includes the use of e-prescribing.

The potential gains from e-prescribing assume that prescribers and pharmacists have access to the required features and use them. Limited research on the topic suggests, however, that not all e-prescribing systems currently have the full range of e-prescribing features required under MIPPA; that even when the features are available, physician practices face barriers to implementing them effectively; and even when they are implemented at the practice level, physicians may not use them. For example, in a small, exploratory qualitative study by Grossman, et al. (2005), physicians did not routinely have access to patient medication histories or formulary data for a significant portion of their patients and when they did, physicians often did not use the information, instead continuing to rely on patients for medication history and pharmacists to identify formulary issues. Several studies have identified that IT system limitations, workflow and training issues, and real or perceived regulatory barriers present obstacles in both the physician and pharmacy settings to electronic transmission of prescriptions (Grossman et al. 2007; NORC 2007; Rupp and Warholak 2008; Warholak and Rupp 2009).

AHRQ proposes to conduct a qualitative research study designed to help build knowledge on how the e-prescribing features required under MIPPA are actually being implemented and used by physicians and pharmacies in 12 nationally representative communities. These communities have been studied longitudinally since the mid-1990s as part of the Center for Studying Health System Change (HSC) Community Tracking Study (CTS) (Center for Studying Health System Change 2007). This qualitative study will collect data from physician practices and pharmacies that are using electronic transmission of prescriptions to allow a focus on both the facilitators of and barriers to this critical aspect of e-prescribing. The study will be the first to ask questions of physician practices and pharmacies in the same communities on the same topics, providing a much more complete picture of e-prescribing implementation. For example, in addition to gaining physician and pharmacy perspectives on electronic transmission, the study will explore how physician practices use patient formulary data and how pharmacies perceive changes in the communication with physician practices around formulary issues with e-prescribing.

Information collected by this study will inform strategies to promote the adoption and effective use of e-prescribing being developed by AHRQ and other Department of Health and Human Services agencies, including the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health IT, as well as State and local governments and private health care organizations. In particular, while physician adoption has been the focus of most policy efforts, findings from the study can help identify and shape strategies to promote more effective implementation of e-prescribing in retail and mail-order pharmacies. This work will be conducted by AHRQ's contractor, the Center for Studying Health System Change (HSC), under contract number 290–05–0007–03. This study is being conducted pursuant to AHRQ's statutory authority to conduct and support research on health care and systems for the delivery of such care, including activities with respect to health care technologies, facilities and equipment, 42 U.S.C. 299a(a)(5).

Method of Collection

The study will use qualitative methods, including telephone interviews with physician practices and pharmacies, as well as State pharmacy associations, IT vendors and other e-prescribing experts. Using semi-structured interview protocols, the following specific research questions will be addressed to provide an in-depth look at unexplored barriers to effective e-prescribing use in physician practices and pharmacies, including:

- How are physicians using third-party information in making prescribing decisions, including patient medication history, generic drug information, and patient-specific formulary data?
- How are physician practices and retail and mail-order pharmacies using e-prescribing systems to communicate electronically with each other?
- What are the most common reasons that physician practices and pharmacies communicate about prescriptions generated by physician e-prescribing systems (regardless of how they were sent)?
- What are the facilitators of and challenges to implementing e-prescribing features that support physician access to third-party information in making prescribing decisions and features that support electronic communication between physician practices and pharmacies?
- What are the perceived effects of having access to e-prescribing features that support physician access to third-party information in making prescribing decisions and features that support electronic communication between physician practices and pharmacies on physician practice and pharmacy operations, physician prescribing behavior and patient outcomes?
- What are the implications for policy efforts to promote e-prescribing?

Estimated Annual Respondent Burden

Interviews will be conducted at a total of 110 organizations over the two years of this project. Within each of the 24 participating physician practices (12 annually), two interviews will be conducted: one with the medical director or physician-user best able to describe practice processes for e-prescribing, who will provide a clinical perspective (Interview Protocol 2), and a second with an IT administrator or office manager, who can provide a technical and operational perspective (Interview Protocol 1). The other 86 organizations will each have only one interview, for a total of 43 additional interviews annually. Eight different organization-specific interview protocols have been developed, with response times ranging from 30 minutes to 1 hour.

Exhibit 1 shows the estimated annual burden hours for each organization's time to participate in this research. The total annual burden is estimated to be 57 hours.

Exhibit 2 shows the estimated annual cost burden associated with the organizations' time to participate in this research. The total annual burden is estimated to be $3,004.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of organizations*	Number of responses per organization	Hours per response	Total burden hours
Interview Protocol 1—Physician Practice IT Administrator or Office Manager	12	1	30/60	6
Interview Protocol 2—Physician Practice Medical Director or Physician User	12	1	45/60	9
Interview Protocol 3—Pharmacy Pharmacist-In-Charge	28	1	1	28
Interview Protocol 4—State Pharmacy Association Representative	6	1	1	6
Interview Protocol 5—Pharmacy IT Vendor Representative	1	1	1	1
Interview Protocol 6—E-prescribing System Vendor Representative	3	1	1	3
Interview Protocol 7—E-prescribing Connectivity and Content Vendor Representatives	3	1	1	3
Interview Protocol 8—Other E-prescribing Experts	2	1	30/60	1
Total	67	NA	NA	57

The estimated total number of unique organizations participating in each year of the study is 55 since Interview Protocols 1 and 2 will both be administered to respondents in physician practices.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of organizations*	Total burden hours	Average hourly wage rate**	Total cost burden
Interview Protocol 1—Physician Practice IT Administrator or Office Manager	12	6	32.62	$196
Interview Protocol 2—Physician Practice Medical Director or Physician User	12	9	80.42	724
Interview Protocol 3—Pharmacy Pharmacist-In-Charge	28	28	48.09	1,347
Interview Protocol 4—State Pharmacy Association Representative	6	6	49.89	299
Interview Protocol 5—Pharmacy IT Vendor Representative	1	1	54.75	55
Interview Protocol 6—E-prescribing System Vendor Representative	3	3	54.75	164
Interview Protocol 7—E-prescribing Connectivity and Content Vendor Representatives	3	3	54.75	164
Interview Protocol 8—Other E-prescribing Experts	2	1	54.75	55
Total	67	57	NA	3,004

* The estimated total number of unique organizations participating in each year of the study is 55 since Interview Protocols 1 and 2 will both be administered to respondents in physician practices.

** Wage rates were calculated using the mean hourly wage from the U.S. Department of Labor, Bureau of Labor Statistics, May 2007 National Occupational Employment and Wage Estimates for the United States, Occupational Employment Statistics (OES), Washington, DC (Feb. 2009), *http://www.bls.gov/oes/2007/may/oes_nat.htm* (accessed April 2009). Wage rate for Interview Protocol 3—Pharmacy Pharmacist-In-Charge reflects the weighted average for retail and mail order pharmacists ($47.58 per hour) and pharmacy chain representatives ($54.75 per hour).

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal Government for this project is $374,635 over a two-year period from February 2, 2009 to February 1, 2010. The estimated average annual cost is $187,318. Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST* TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Development and Project Management	$87,783	$43,892
Data Collection Activities	141,048	70,524
Data Analysis	55,884	27,942
Publication and Dissemination of Results	89,920	44,960
Total	374,635	187,318

*Costs are fully loaded including overhead and G&A.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 22, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–15089 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Breast Cancer and Environmental Research Act of 2008; Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), the authorities under Section 2 of the Breast Cancer and Environmental Research Act of 2008, Public Law 110–354, as amended, which amends Subpart 1 of Part C of Title IV of the Public Health Service Act by adding Section 417F, authorizing the establishment of the Interagency Breast Cancer and Environmental Research Coordinating Committee. I am also delegating the authority under Section 417F of the Public Health Service Act, as amended, to select both voting and nonvoting members of the Committee and to review the necessity of the Committee in the year 2011 and, thereafter, at least once every two years.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines, and regulations.

In addition, I ratified and affirmed any actions taken by the NIH Director or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: June 23, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–15439 Filed 6–29–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality Subcommittee on Quality Measures for Children's Healthcare in Medicaid and Children's Health Insurance Programs (CHIP)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality Subcommittee on Quality Measures for Children's Healthcare in Medicaid and Children's Health Insurance Programs (CHIP).

DATES: The meeting will be held on Wednesday, July 22, 2009, from 10 a.m. to 5 p.m. and Thursday, July 23, 2009 from 9 a.m. to 5 p.m.

ADDRESSES: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Padmini Jagadish, Public Health Analyst at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1927. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Michael Chew, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144, no later than July 3, 2009.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality was established in accordance with section 921 (now section 931) of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of AHRQ to enhance the quality, and improve the outcomes of health care services; improve access to such services through scientific research; and promote improvements in clinical practice and in the organization,

financing, and delivery of health care services. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members.

AHRQ's National Advisory Council on Healthcare Research and Quality (NAC) has established a Subcommittee on Quality Measures for Children's Healthcare in Medicaid and Children's Health Insurance Programs (CHIP). The Subcommittee was created to provide advice to the NAC for consideration and transmission to AHRQ as AHRQ undertakes responsibilities in the identification of an initial core quality measure set for use by Medicaid and CHIP programs for children's healthcare.

The identification of an initial core measure set for public comment is required under Public Law 111–3, the Child Health Insurance Program Reauthorization Act (CHIPRA). The initial core measure set is required to be posted for public comment by January 1, 2010. CHIPRA reauthorized the Child Health Insurance Program (CHIP) originally established in 1997, and added a number of new provisions designed to improve health care quality and outcomes for children in Title IV of the law. AHRQ is working closely with the Centers for Medicare and Medicaid Services (CMS) in implementing these provisions. For more information about AHRQ's role in carrying out the quality provisions of CHIPRA, see *http://www.ahrq.gov/chip/chipraact.htm*. This Web site will link to an e-mail address that can be used to submit comments on CHIPRA quality measure development as the process of identifying the initial core measure set proceeds.

II. Agenda

On Wednesday, July 22, 2009, the Subcommittee meeting will convene at 10 a.m., with the call to order by the Subcommittee Co-Chairs. The AHRQ Director or her designee will present an update on pertinent AHRQ activities with respect to health care quality-related efforts and research and projects of interest with respect to pediatric health care.

A draft agenda and roster of subcommittee members will be available before the meeting from Padmini Jagadish, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1927, e-mail address *Padmini.Jagadish@ahrq.hhs.gov*. The final agenda, including the time for public comment during the meeting, will be available on the AHRQ Web site at *http://www.ahrq.gov/chip/chipraact.htm* no later than July 20, 2009. Minutes will be available within 5 business days after the meeting.

Dated: June 22, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–15091 Filed 6–29–09; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HOMELAND SECURITY

Policy Directorate/Office of Strategic Plans; Quadrennial Homeland Security Report

AGENCY: Policy Directorate/Office of Strategic Plans, Department of Homeland Security.

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 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). Policy Directorate/Office of Strategic Plans is soliciting comments concerning the Quadrennial Homeland Security Report. The purpose of this notice is to allow 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 30, 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) 395–5806.

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: Department of Homeland Security (DHS), Policy Directorate/Office of Strategic Plans, Michael Galang, (202) 282–9118.

SUPPLEMENTARY INFORMATION: A stakeholder online collaboration platform will be created and hosted to engage homeland security stakeholders around the compelling questions produced by the QHSR study groups. 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 the platform, 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. All homeland security stakeholders are eligible and are invited to do so. The Web site will be public facing with self-identify and opt-in user information requested.

Participation by the public is completely voluntary. Content will be posted on the online collaboration Web site for up to five days for each collaboration event. At the conclusion of each event, comments and input will be reviewed by the study groups and incorporated as appropriate into their products. The time required by the public to provide input on content posted on the collaboration site is estimated at between one and two hours per collaboration event for a maximum of six hours over the course of the QHSR. Three online collaboration events are currently proposed (July 16–20, August 13–17, and September 17–21). The public will be notified of content postings via the DHS QHSR public Web site, *http://www.dhs.gov/qhsr*. Other notification options may include FedBiz notices about the scheduled online collaboration events, the DHS Public Affairs news feed, and

various GSA-approved social networking media (*e.g.,* Twitter, Facebook). Homeland security-related associations will also be asked to invite their members to participate in the online collaborations.

Participants will be asked to review developed content for those homeland security topics they are interested in. Examples of requested participant input include:

- Comment and rate phase I solicited input, thereby prioritizing those concepts and suggestions they deem critical and which should be considered by the study groups during their respective reviews.
- Comment on and rate proposed strategic objectives and key strategic outcome statements for the homeland security mission areas under review.
- Vote on proposed mission objectives and outcome statements as to whether they agree or disagree with the proposed content.

In addition to viewing the input received via public participation in the collaboration tool during and after the dialog period, the input will be sorted and disseminated to the study groups who will then incorporate the input into their deliberations and subsequent content generation as appropriate. Study group content will be posted via two collaboration events, in July and August, with final draft conclusions posted via the collaboration event in September, prior to the study groups' final reports.

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: State, Local, Tribal, and Non-Government Stakeholders.

Number of Respondents: 50,000 respondents.

Estimated Time Per Respondent: 6 hours per respondent.

Total Burden Hours: 300,000 annual burden hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): 600,000.

Margaret Graves,

Acting Chief Information Officer.

[FR Doc. E9–15365 Filed 6–29–09; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Overflight Program/Advance Notice for Aircraft Landings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0087.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Overflight Program/Advance Notice for Aircraft Landings. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 19098–19099) on April 27, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 30, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies'/components' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Overflight Program/Advance Notice for Aircraft Landings.

OMB Number: 1651–0087.

Form Number: CBP Forms 442 and 442A.

Abstract: CBP Forms 442 and 442A are used by private flyers to obtain a waiver for landing requirements and normal CBP processing at designated airports along the southern border. The CBP regulations also require owners and operators of some commercial aircraft to request CBP permission to land at least 30 days before the first flight date. In addition, there is a requirement for pilots of private aircraft to submit notice of arrival and notice of departure information through Advance Passenger Information System (APIS) manifests no later than sixty (60) minutes prior to departure for flights arriving in to or departing from the United States.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension with change to the burden hours due to better estimates by CBP regarding time per response.

Affected Public: Individuals.

Estimated Number of Respondents: 755,462.

Estimated Number of Total Annual Responses: 760,655.

Estimated Time per Response: 1.1 minutes.

Estimated Total Annual Burden Hours: 13,928.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: June 25, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–15438 Filed 6–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0986]

Voluntary Compliance With International Sewage Regulations in Annex IV to MARPOL 73/78

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard announces the availability of Navigation and Vessel Inspection Circular (NVIC) No. 1–09, which provides guidance on voluntary compliance with MARPOL Annex IV. On January 1, 2010, the revised effluent standards and performance test criteria for sewage treatment plants under MARPOL Annex IV will enter into force internationally. The United States is not party to MARPOL Annex IV; however, vessels registered in the United States visiting nations that are party may need to demonstrate compliance with MARPOL Annex IV regulations on the prevention of pollution by sewage from ships. The U.S. Coast Guard is assisting vessels registered in the United States as well as the manufacturers of sewage treatment plants, and the independent laboratories that test such equipment, in demonstrating compliance with MARPOL Annex IV by providing the guidance in NVIC No. 1–09. Failure of a vessel registered in the United States to have the appropriate certificate demonstrating voluntary compliance with MARPOL Annex IV could result in a port State detention abroad.

DATES: The revised effluent standards and performance tests for sewage treatment plants enter into force on January 1, 2010, for ships with a keel laid date on or after January 1, 2010, and for ships having a sewage treatment plant installed or delivered on or after January 1, 2010.

ADDRESSES:

Testing Facility

Requests for a U.S. Coast Guard letter of acceptance as a *qualified facility* may be sent to the Office of Design and Engineering Standards (CG–521), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–7126.

Equipment Manufacturer

Requests for a U.S. Coast Guard Certificate of Approval may be sent to the Marine Safety Center, U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–7102.

Vessel

Requests for a Statement of Voluntary Compliance with MARPOL Annex IV and request for onboard survey may be sent to the local Officer in Charge, Marine Inspection (OCMI). For a listing of OCMIs, visit our Internet portal *Homeport* at *http://homeport.uscg.mil* and then select Port Directory.

FOR FURTHER INFORMATION CONTACT: For additional information about this notice, please contact one of the following:

Testing Facility

Lieutenant Rob Griffiths, Office of Design and Engineering Standards (CG–521), telephone +1 (202) 372–1367, e-mail *Robert.P.Griffiths@uscg.mil.*

Equipment Manufacture

Chief Warrant Officer Timothy R. Willis, Marine Safety Center, telephone +1 (202) 475–3402, e-mail *Timothy.R.Willis@uscg.mil.*

U.S. Flagged Vessels

Local OCMI. *See* Port Directory at *http://homeport.uscg.mil.* For vessels enrolled in the Alternate Compliance Program, contact the Authorized Classification Society. Alternatively, contact Lieutenant Commander Scott Muller, Office of Vessel Activities (CG–543), telephone (202) 372–1220, e-mail *Scott.W.Muller@uscg.mil.*

Non-U.S. Flagged Vessel

Local port State control office. See Port Directory at *http://homeport.uscg.mil.* Alternatively, contact Mr. John Sedlak, Office of Vessel Activities (CG–543), telephone +1 (202) 372–1240, e-mail *John.S.Sedlak@uscg.mil.*

SUPPLEMENTARY INFORMATION: Navigation and Vessel Inspection Circular (NVIC) No. 1–09 establishes the policies, procedures, and standards for requesting U.S. Coast Guard statement of voluntary compliance with MARPOL Annex IV. These procedures are divided into four distinct sections covering: (1) General applicability, (2) testing facilities, (3) equipment manufacturers, and (4) the issuance of vessel certificates. You may download this NVIC from the Internet at *http://www.uscg.mil/hq/cg5/nvic/* or obtain a copy by contacting one of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) recently revised MARPOL Annex IV resulting in several changes to the regulations governing discharge of sewage from ships on international voyages. First, inspection criteria were enhanced to include initial surveys of installed sewage systems prior to being placed into service and periodic surveys throughout the life of the ship. Next, standards for discharging treated sewage (*i.e.,* effluent) into the water were made more stringent and equipment testing procedures were standardized. Finally, discharge rates for untreated sewage were established.

These revisions to MARPOL Annex IV, especially the effluent standards contained in resolution MEPC.159(55), which are effective on January 1, 2010, eliminates the prior equivalency that had existed between Type I and Type II marine sanitation device requirements approved by the United States and sewage treatment plant requirements of MARPOL Annex IV. This creates a potential for adverse port State control action (*e.g.,* detention) to be taken against U.S. registered vessels engaged in international voyages with a keel laid date on or after January 1, 2010, or having a sewage treatment plant installed or delivered on or after that date.

Discussion

MARPOL Annex IV requires certain ships that engage in international voyages to have a valid International Sewage Pollution Prevention Certificate (ISPPC) issued by its flag Administration or by a recognized organization acting on behalf of the flag Administration. Under the provisions of Annex IV, an ISPPC cannot be issued to a ship unless its flag State is party to that Annex.

The United States is not party to MARPOL Annex IV. Vessels registered in the United States that engage in international voyages with sewage systems in compliance with Annex IV may be eligible instead to receive a Statement of Voluntary Compliance (SOVC). This certificate takes the place of the ISPPC and is issued to a U.S. vessel by the U.S. Coast Guard or by an Authorized Classification Society (ACS), as appropriate, to demonstrate compliance with MARPOL Annex IV.

Applicability

MARPOL Annex IV, as adopted in resolution MEPC.115(51), is applicable to ships on international voyages that are:

(1) 400GT and greater; or

(2) Less than 400GT when certified to carry more than 15 persons, which includes both passengers and crew.

The effluent standards and performance tests, as adopted in resolution MEPC.159(55), are applicable to sewage treatment plants for ships

with a keel laid date on or after January 1, 2010, and for ships having a sewage treatment plant installed or delivered on or after January 1, 2010. Ships with a keel laid date prior to January 1, 2010, or ships having a sewage treatment plant installed or delivered prior to that date, may continue to use equipment certified to either the 1976 international effluent standards contained in resolution MEPC.2(VI) or an applicable national specification. In the United States, this applicable national specification is 33 CFR Part 159.

MARPOL Annex IV may be applicable to other vessels including small tugs, recreational boats, yachts, *etc.,* that engage in international voyages because Regulation 4 in MARPOL Annex IV requires a flag Administration to establish appropriate measures for vessels not subject to international sewage regulations. In this case, for U.S. vessels and other vessels subject to the jurisdiction of the United States, appropriate measures are provided for under 33 CFR Part 159. U.S. vessels intending to engage in international voyages may apply for a SOVC.

Application Procedures

Facilities that are in the business of independently evaluating, inspecting, and testing shipboard sewage systems and the effluent discharged from such systems for compliance with published standards may request a U.S. Coast Guard letter of acceptance as a *qualified facility* from the Office of Design and Engineering Standards (CG–521) listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Manufacturers of sewage treatment plants may apply to any facility accepted by the U.S. Coast Guard as a *qualified facility* to perform independent evaluation, inspection, and testing of sewage treatment plants for compliance with MARPOL Annex IV. For sewage comminuting and disinfection systems, or for sewage holding tanks, the application is sent instead to any facility accepted by the U.S. Coast Guard as a *recognized facility.* To obtain a U.S. Certificate of Approval, the manufacturer submits the results from the *qualified facility* or *recognized facility,* as appropriate, along with other supporting documentation, to the Marine Safety Center listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**.

The owner or operator of a vessel registered in the United States with an installed and operational sewage system certified by the U.S. Coast Guard may apply for a SOVC for MARPOL Annex IV from the local OCMI or ACS, as appropriate. For assistance in finding the nearest OCMI or ACS, visit our Internet portal *Homeport* at *http://homeport.uscg.mil* and then select Port Directory. Alternatively, you may contact the Office of Vessel Activities (CG–543) listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Surveys

The vessel is subject to an initial examination before the ship is put into service or before the SOVC is issued for the first time. The purpose of this examination is to verify that the vessel's structure, equipment, systems, fittings, arrangement, and material of the installed sewage system are fully compliant with MARPOL Annex IV.

Before 5 years after the initial or last renewal survey, the vessel is subject to a renewal examination. The purpose of this examination is to verify that the vessel's structure, equipment, systems, fittings, arrangement, and material of the installed sewage system are still compliant with MARPOL Annex IV.

The vessel is subject to additional examinations, either general or partial, according to the circumstances, whenever any important repairs or renewals have been made to the installed sewage system. The purpose of this examination is to verify that the necessary repairs or renewals have been effectively made, that the materials and workmanship of such repairs or renewals are satisfactory, and that the ship is compliant with MARPOL Annex IV.

Statement of Voluntary Compliance

The cognizant OCMI or ACS may issue or renew, as appropriate, the SOVC for MARPOL Annex IV to a U.S. vessel that is equipped with an installed and operational sewage system certified by the U.S. Coast Guard after successful onboard survey. The SOVC for MARPOL Annex IV, issued on form CG–6047A, is valid for a period up to five years unless endorsed with an extension, provided the periodic examinations are conducted and there is no change in the vessel's flag. Vessels flagged outside the United States are not issued a SOVC certificate by the U.S. Coast Guard.

Reciprocity

Any vessel flagged or registered outside the United States that holds a valid ISPPC issued by its flag Administration indicating the installed sewage system complies with MARPOL Annex IV, as amended by either resolution MEPC.159(55) or MEPC.2(VI), will be accepted by the U.S. Coast Guard as being in compliance with U.S. regulations on design, construction, testing, and certification contained in 33 CFR part 159, while operating in waters subject to the jurisdiction of the United States. Acceptance of a valid ISPPC is conditional on the installed sewage system being substantially in an operable condition as required by MARPOL Annex IV, and may be subject to verification by the U.S. Coast Guard under port State control.

Existing Certificates of Equivalency

The cognizant OCMI or ACS, as appropriate, may continue to issue and renew existing Certificates of Equivalency issued to U.S. vessels under the provisions of ''MOC Policy Letter No. 03–03'' until January 1, 2010, at which time all such certificates will expire. A copy of ''MOC Policy Letter No. 03–03'' can be found on *Homeport* by clicking the ''Library'' tab and then the ''Policy'' tab, and finally the ''Policy Letter'' tab. SOVC certificates are required on or after January 1, 2010.

Dated: June 23, 2009.

Brian M. Salerno,

Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E9–15485 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–20]

Notice of Proposed Information Collection: Comment Request; Manufactured Home Construction and Safety Standards Program

AGENCY: Office of the Assistant Secretary for Housing, 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 31, 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: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6401 (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: Manufactured Home Construction and Safety Standards Program.

OMB Control Number, if applicable: 2502–0233.

Description of the need for the information and proposed use: Collection of this information will result in a better determination of reporting how Primary Inspection Agencies and manufacturers request certification labels, track payment, track production, refund monies, and report missing or damaged labels to the Department or its monitoring contractor.

Agency form numbers, if applicable:

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 burden hours is 2,811. The number of respondents is 176, the number of responses is 5,622, the frequency of response is on occasion, and the burden hour per response is 6.5.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority:

The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 23, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–15358 Filed 6–29–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281-N–51]

Housing Choice Voucher Program

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.

Public Housing Authorities (PHA) apply for funding to assist very low-income families to lease or purchase housing. PHAs maintain records on participant eligibility, unit acceptability, lease and/or housing assistance payments, and budget and payment documentation. In some cases PHAs voluntarily divest their voucher programs to a receiving PHA. PHAs may also project-base a portion of their vouchers or use their vouchers under the Homeownership Option.

DATES: Comments Due Date: July 30, 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 (2577–0169) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

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 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: Housing Choice Voucher Program.

OMB Approval Number: 2577–0169.

Form Numbers: HUD–52515, HUD–52517, HUD–52530–A, HUD–52530–B, HUD–52530–C, HUD–52531–A, HUD–52531–B, HUD–52578–B, HUD–52580–A, HUD–52641, HUD–52641–A, HUD–52642, HUD–52642–A, HUD–52646, HUD–52649, HUD–52665, HUD–52667, HUD–52672, HUD–52681, HUD–52681–B.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities (PHA) apply for funding to assist very low-income families to lease or purchase housing. PHAs maintain records on participant eligibility, unit acceptability, lease and/or housing assistance payments, and budget and payment documentation. In some cases PHAs voluntarily divest their voucher programs to a receiving PHA. PHAs may also project-base a portion of their vouchers or use their vouchers under the Homeownership Option.

Frequency of Submission: On occasion, quarterly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	492,450	6.129		0.354		1,071,354

Total Estimated Burden Hours: 1,071,354.

Status: Revision of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 24, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–15478 Filed 6–29–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5311–N–03]

Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that an exception to the Buy American requirements of the Recovery Act was determined applicable to the Boston Housing Authority's construction of a project using Recovery Act funds.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–4000, telephone 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act imposes a ''Buy American'' requirement on Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on June 11, 2009, HUD granted the Boston Housing Authority, upon its request, an exception to applicability of the Buy American requirements with respect to work, using Recovery Act funds, in connection with the construction of units for Phase 1B of the Washington Beech HOPE VI project. Although a final determination of applicability of the Buy American requirements to housing had not been made at the time that HUD granted the exception, given the compelling exigencies presented by BHA in its waiver request (as described in this notice), HUD considered the waiver request on the assumption of the applicability of the Buy American requirements to the Phase 1B project. The exception was granted by HUD on the basis that applicability of the Recovery Act Buy American requirements would be inconsistent with the public interest.

BHA received Recovery Act funds in the amount of $10 million for construction of Phase 1B units of the Washington Beech HOPE VI project. An award of the HOPE VI funds to BHA predated BHA's award of the Recovery Act funds. BHA notified HUD that it had procured Trinity Financial as its development partner in 2007 for the HOPE VI grant awarded for the construction of the Phase 1B units. Because the award of the HOPE VI grant to BHA was made prior to passage of the Recovery Act's requirements, the requirements of section 1605(a) were not included in BHA's procurement process. Trinity Financial secured and selected a general contractor, CWC Builders, Inc., to build the units in Phase 1B. This construction contract between Trinity Financial and CWC was also negotiated prior to the passage of the Recovery Act, and accordingly section 1605 requirements were not included in the contract. The contract requires CWC Builders to obtain all structural steel as soon as possible to meet the construction deadlines for the Phase 1B project.

In addition to these contracts entered into prior to the Recovery Act, Washington Beech Phase 1B will be developed by a limited partnership that includes a tax credit investor, RBC Tax Credit Equity, LLC (RBC). Prior to passage of the Recovery Act, Trinity Financial received a commitment from RBC to provide equity through the Low-Income Housing Tax Credit (LIHTC) program. RBC informed Trinity Financial and BHA that if the funding transaction for Phase 1B did not close and documents were not recorded by June 15, 2009, RBC would withdraw its offer to purchase the Phase 1B credits. Such withdrawal would place Trinity Financial in the situation of having to renegotiate the tax credit contribution or find another equity investor. BHA advised that delay at this juncture would imperil the availability of the tax credits and jeopardize the ability to complete construction of the Phase 1B units by the deadline of July 28, 2010. BHA also advised that, in accordance with the contracts entered into prior to enactment of the Recovery Act, CWC Builders are ready to begin construction immediately upon the closing that was scheduled to take place on June 15, 2009. BHA advised that if there is a delay in the start of construction, jobs planned by the construction would be lost.

HUD determined that application of the Buy American requirements to the Phase 1B units, given the actions and contracts that occurred prior to enactment of the Recovery Act would be inconsistent with the public interest. The exception granted is for Phase 1B units only. It is not applicable to future construction phases at the Washington Beech HOPE VI project.

Dated: June 23, 2009.

Dominique G. Blom,

Deputy Assistant Secretary for Public Housing Investments.

[FR Doc. E9–15480 Filed 6–29–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–07]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Healthy Homes Technical Studies

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its Web site of the application information, submission deadlines, funding criteria, and other requirements for the FY2009 Healthy Homes Technical Studies NOFA. The Healthy Homes Technical Studies NOFA makes $4 million available under the Department of Housing and Urban Development Appropriations Act 2009 (Pub. L. 111–8, approved March 11, 2009). Applicants for assistance under the Healthy Homes Technical Studies NOFA must address applicable requirements found in the Notice of HUD's Fiscal Year 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the HUD's FY2009 NOFAs for Discretionary Programs published on December 29, 2008 (73 FR 79548), as amended on April 16, 2009 (74 FR 17685). Applicants should take particular note that they should follow the application submission instructions contained in this NOFA and not use those in the General Section. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the HUD Web site at *http://www.hud.gov/lead*.

FOR FURTHER INFORMATION CONTACT: For information concerning the Healthy Homes Technical Studies Program, contact Dr. Peter Ashley, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8236, Washington, DC 20410–3000; telephone 202–402–7595 (this is not a toll-free number) or via e-mail at *Peter.J.Ashley@hud.gov*. Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: June 18, 2009.

Jon L. Gant,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. E9–15460 Filed 6–25–09; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5324–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2009

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2009 and ending on March 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276,Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2009.

SUPPLEMENTARY INFORMATION:

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall: a. Identify the project, activity, or undertaking involved; b. Describe the nature of the provision waived and the designation of the provision; c. Indicate the name and title of the person who granted the waiver request; d. Describe briefly the grounds for approval of the request; and e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2009 through March 31, 2009. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, *etc.*). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is

listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2009) before the next report is published (the second quarter of calendar year 2009), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 24, 2009.

Helen R. Kanovsky,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2009 Through March 31, 2009

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Highlander Park Community Center Complex features a gym, a conference and meeting facility, a fitness center, a public library branch, outdoor sports courts, and a playground for the residents of Dunedin, Florida. After funding was appropriated by Congress, non-HUD funds were spent on the project prior to the performance of an environmental review in violation of 24 CFR 58.22(a). The project was funded as Economic Development Initiative Special Projects B–05–SP–FL–0432 and B–06–SP–FL–0203.

Nature of Requirement: HUD's regulations at 24 CFR 58.22 require an environmental review and a request for release of funds to be completed and certified before non-HUD funds can be used on a project.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 16, 2009.

Reason Waived: The waiver was granted because errors were unintentional and the project had no adverse environmental impact and furthered agency objectives.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development 451 7th Street SW., Room 7250, Washington, DC 20410–7000, telephone number (202) 402–4442.

• *Regulation:* 24 CFR 92.203(a)(1) and (2); 24 CFR 92.207; 24 CFR 92.222(b); 24 CFR 92.250(a); 24 CFR 92.251; 24 CFR 92.612(b); 24 CFR 92.254(a)(2); 24 CFR 92.254(b)(1); 24 CFR 92300(a)(1); 24 CFR 92.353(d); 24 CFR 92.602(a)(1); and 24 CFR 92.602(e).

Project/Activity: The damage to infrastructure and housing units, as well as the displacement of families caused by Hurricane Ike created an urgent need for assistance in Harris County, Texas, and required the waiver of various project or activity requirements in order to expedite use of funds in order to assist low-income home owners meet their housing needs.

Nature of Requirement: The purpose of the regulatory waivers is to assist a jurisdiction's disaster recovery efforts. The damage to infrastructure and housing units, as well as the displacement of families, caused by Hurricane Ike has created an urgent need for assistance in Harris County, Texas.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 2009

Reason Waived: Hurricane Ike caused significant wind and flood damage to homes and businesses in Harris County. Many households were displaced because of the storm. The waiver of the HOME Investment Partnerships Program regulations and statutory requirements will facilitate Harris County's recovery efforts following damage resulting from Hurricane Ike. Pursuant to the authority provided in Section 290 of NAHA, good cause exists to suspend HOME statutory requirements and waive HOME regulatory provisions for Harris County, a Presidentially-declared disaster area under Title IV of the Robert T. Stafford Act.

Contact: Ms. Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, Room 7162, 451 7th Street, SW., Washington, DC 20410.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 203.41(a)(5).

Project/Activity: Several nonprofit governmental organizations requested waiver of the section 501(c)(3) requirement in order to be placed on the FHA Nonprofit Organization Roster.

Nature of Requirement: On February 23, 2009, HUD issued a waiver of two requirements, codified at 24 CFR 203.41(a)(5) of the Department's regulations, relating to the eligibility of nonprofit organizations seeking placement on the FHA Nonprofit Organization Roster and approval providing secondary financing to a mortgagor for the property investment required by National Housing Act 203(b)(9). The regulations waived are: (1) 24 CFR 203.41(a)(5), which defines ''eligible nonprofit organization,'' in part, as an organization of the type described in section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as an organization exempt from Federal taxation under section 501(a) of the IRC; and (2) 24 CFR 203.41(a)(5)(ii), which requires that all nonprofit organizations participating in FHA programs have a voluntary board.

Granted By: Brian Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 23, 2009.

Reason Waived: FHA received several requests from nonprofit instrumentalities of government seeking placement on the Roster and approval to provide secondary financing. Although these nonprofit instrumentalities satisfy all other FHA requirements for placement on the Roster and eligibility to provide secondary financing they are not organizations of the type described in section 501(c)(3). Their income is exempt from taxation under IRC 115. Thus they are ineligible for placement on the Roster as providers of secondary financing. This waiver will enable IRC 115 nonprofit government instrumentalities to be placed on the Roster so they can provide affordable housing opportunities to more Americans via secondary financing until the regulations are amended. In addition, the voluntary board requirement is waived for all nonprofit instrumentalities of government seeking placement on the FHA Roster and approval to participate in FHA programs as providers of secondary financing. This waiver will enable a nonprofit instrumentality of government to have a board member who is also a salaried employee of the governmental body in control of the nonprofit instrumentality.

Contact: Ruth Roman, Director, Office of Home Mortgage Insurance Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9274, Washington, DC 20410–8000, telephone number (202) 708–0317.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Faush–Metropolitan Manor (Jefferson County)—FHA Project Number 062–EH022. The project was awarded a Flexible Subsidy Operating Loan to maintain its financial soundness, improve the management and maintain the low-income character of the project. The owner requested a deferment of payment of the Flexible Subsidy Operating Assistance Loan.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project

owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2009.

Reason Waived: This waiver was granted to allow the owner to refinance the Section 202 Direct Loan pursuant to section 223(f) of the National Housing Act without a requirement to pay in full the principal and interest due on the Flexible Subsidy Operating Assistance Loan. The repayment of the Flexible Subsidy Operating Assistance Loan will be re-amortized over the 35-year period of the Section 223(f) mortgage loan. Faush-Metropolitan Manor, Incorporated, will execute and record a rental Use Agreement extending the affordability of the project through the term of the new financing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Ansonborough Housing Corporation—FHA Project Number 054-EH032, Charleston, South Carolina. Seventy-seven units of the project receive Section 8 project-based rental assistance and require renovations to continue as a well-maintained source of affordable housing. Refinancing will provide sufficient funds for needed capital improvements at the property.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.''

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 22, 2009.

Reason Waived: This waiver was granted to allow the owner to amortize the flexible subsidy debt with the newly refinanced mortgage and to continue to operate the project after prepayment under a Use Agreement. There will be no monies leaving the project as a result of prepayment, and needed repairs allow long-term preservation of this affordable housing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 236.60(g).

Project/Activity: Bethany Towers—FHA Project Number 067–44811, South Pasadena, Florida. The owner requested waiver of the requirement to provide a monthly report of Section 236 Excess Rental Income for the period January 2002 through August 2005.

Nature of Requirement: Section 236.60(g) of HUD's regulations governs Excess Income post-approval requirements. Excess Income consists of cash collected as rent from residents by the mortgagor on a unit-by-unit basis, that is in excess of the HUD-approved unassisted Basic Rent. The unit-by-unit requirement necessitates that, if a unit has Excess Income , the Excess Income must be returned to HUD. A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose. Post-approval requirements include a monthly report. A mortgagor approved to retain Excess Income must continue to prepare and submit to HUD a revised Form HUD–93104, Monthly Report of Excess Income, or successor form.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 24, 2009.

Reason Waived: This regulatory waiver was granted to bring the owner into compliance with regulations governing monthly reporting of Section 236 Excess Rental Income. The Jacksonville Multifamily Hub approved Bethany Housing's request to retain the monthly excess rental income during the period January 2002 through 2005; however, the owner failed to comply with the monthly reporting requirement. The owner requested permission to prepay the mortgage loan and sell the project to a new entity as part of a Settlement Agreement with the Department. The purchasing entity agreed to infuse capital to address the project's physical and financial deficiencies, and execute and record a rental use agreement to preserve it as affordable low-income rental housing through the maturity date of the mortgage note, plus 20 years, to January 1, 2032.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cottonwood CILA, East Peoria, IL, Project Number: 072–HD153/IL06–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 6, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Beautiful Light Inn, Whiteville, NC, Project Number: 053–EE167/NC19–S051–006

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 30, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Our Lady of Consolation, Basile, LA, Project Number: 064–EE218/LA48–S071–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 3, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Hempfield Apartments, Greenville, PA, Project Number: 033–EE130/PA28–S071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 25, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room

6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Palo Duro II, Oklahoma City, OK, Project Number: 117–HD039/OK56–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 26, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Presbyterian Apartments of Northport II, Northport, AL, Project Number: 062–EE084/AL09–S071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 26, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Forrest City Independent Living, Forrest City, AR, Project Number: 082–HD098/AR37–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 27, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Octavia Court, San Francisco, CA, Project Number: 121–HD087/CA39–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 27, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fruitland Lane Apartments, Coeur d' Alene, ID, Project Number: 124–HD013/ID13–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 27, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Pilgrim Place III, Houston, TX, Project Number: 114–EE135/TX24–S071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 4, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cornerstone Community, Leavenworth, WA, Project Number: 127–HD039/WA19–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 4, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Joseph's Dream, Bedford, VA, Project Number: 151–EE123/VA36–S071–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 11, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ASI Watertown, Inc., Watertown, SD, Project Number: 091–HD012/SD99–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 24, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Scottsdale Estates Group Home, Fredericksburg, VA, Project Number: 051–HD139/VA36–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Arcadia Place, Arcadia, LA, Project Number: 064–EE206/LA48–S061–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 3, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Additional time was needed for the sponsor/owner to obtain additional funds, for the firm commitment to be issued, and for the initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Arcadia Haven, Arcadia, LA, Project Number: 064–HD103/LA48–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 13, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Additional time was needed for the firm commitment to be issued and for initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Easter Seals Housing Solutions, Sheridan, WY, Project Number: 109–HD014/WY99–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 18, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Additional time was needed for the firm commitment to be issued and for initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kent Gardens Senior Community, San Lorenzo, CA, Project Number: 121–EE172/CA39–S041–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2009.

Reason Waived: Additional time was needed for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Piney Ridge II, Danville, VA, Project Number: 051–HD136/VA36–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2009.

Reason Waived: The sponsor/owner needed additional time for approval of site plans required by the City of Danville, Virginia, and for the firm commitment application to be submitted and processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Village at French's Farm, Pembroke, NH, Project Number: 024–EE102/NH36–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2009.

Reason Waived: The sponsor/owner needed additional time for approval of zoning and for the firm commitment application to be submitted and processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: SHDC No. 12, Kailua Kona, HI, Project Number: 140–HD030/HI10–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2009.

Reason Waived: Additional time was needed for the sponsor/owner to obtain a new contractor and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lil Jackson Senior Community, Oceanside, CA, Project Number: 129–EE032/CA33–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 6, 2009.

Reason Waived: Additional time is needed for the City of Oceanside to complete the approval process and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mulberry Manor, Wayne, WV, Project Number: 045–HD041/WV15–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 6, 2009.

Reason Waived: Additional time was needed for the sponsor/owner to resolve easement issues and obtain a new contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Ann's Catholic Senior Housing, Lansford, PA, Project Number: 034–EE149/PA26–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 15, 2009.

Reason Waived: Additional time was needed for the Historic Preservation Advisory Council to review the Memorandum of Agreement executed for the site and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Surf Gardens, Brooklyn, NY, Project Number: 012–EE330/NY36–S031–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 26, 2009.

Reason Waived: Additional time was needed for the City of New York to complete the process for conveying the site to the owner and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Transitional Services for New York, New York, Project Number: 012–HD128/NY36–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 27, 2009.

Reason Waived: The sponsor/owner needed additional time to resolve City and Uniform Federal Accessibility Standards (UFAS) requirements regarding availability of handicapped accessible parking spaces and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Center of Hope, Southbridge, MA, Project Number: 023–HD221/MA06–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 30, 2009.

Reason Waived: The sponsor/owner needed additional time to secure additional funds, resolve design issues and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TELACU Housing San Bernardino IV, San Bernardino, CA, Project Number: 143–EE063/CA43–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 30, 2009.

Reason Waived: Additional time was needed to resolve zoning and offsite issues and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Alex Apartments, West Carrollton, OH, Project Number: 046–HD032/OH10–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 30, 2009.

Reason Waived: The sponsor/owner needed additional time to resolve litigation issues and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gamwell Residence, Pittsfield, MA, Project Number: 023–HD226/MA06–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 3, 2009.

Reason Waived: The sponsor/owner needed additional time to secure secondary funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kowchuk, Lanesborough, MA, Project Number: 023–HD224/MA06–Q051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 5, 2009.

Reason Waived: The sponsor/owner needed additional time to secure additional funds and obtain a new general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: SHDC No. 12, Kailua-Kona, HI, Project Number: 140–HD030/HI10–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 5, 2009.

Reason Waived: The sponsor/owner needed additional time to reconcile the legal description of the property and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Acres Homes Garden Apartments, Houston, TX, Project Number: 114–HD031/TX24–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 24, 2009.

Reason Waived: The sponsor/owner needed additional time to select new members for their owner board, and for the firm commitment application to be processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Eskaton Roseville Manor, Roseville, CA, Project Number: 136–EE081/CA30–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 6, 2009.

Reason Waived: The sponsor/owner needed additional time to resolve issues with the firm commitment application and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Transitional Services for New York, New York, Project Number: 012–HD128/NY36–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 19, 2009.

Reason Waived: The sponsor/owner needed additional time to resolve issues with the New York City Department of Buildings and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victory Crest, Chillum, MD, Project Number: 000–EE066/MD39–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 20, 2009.

Reason Waived: The sponsor/owner needed additional time for the firm commitment to be reprocessed due to the contractor's increased costs and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Garrett House, Wilmington, DE, Project Number: 032–HD036/DE26–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 24, 2009.

Reason Waived: The sponsor/owner needed additional time to resolve environmental issues and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Matti, Miami Beach, FL, Project Number: 066–EE111/FL29–S061–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 24, 2009.

Reason Waived: The sponsor/owner needed additional time to obtain approval of the project from Florida Department of Environmental Resources Management (DERM) and the City of Miami Beach, to secure secondary funding and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: SHDC No. 12, Kailua-Kona, HI, Project Number: 140–HD030/HI10–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 24, 2009.

Reason Waived: The sponsor/owner needed additional time for the contractor to obtain a Performance Payment bond, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.830(b) and 891.830(c)(4).

Project/Activity: Estabrook Senior Housing, San Leandro, CA, Project Number: 121–EE194/CA39–S061–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18

months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a draw down schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 5, 2009.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to be initially/finally closed. In order to meet the 50 percent test of the Internal Revenue Service, a waiver was provided to allow the capital advance funds to be drawn down in one requisition after completion of construction at the initial/final closing of the project. To not delay the construction of this mixed finance project a waiver was approved to allow the capital advance funds to repay funds borrowed to pay for the construction of the project occurring prior to initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c)

Project/Activity: Blackberry-McCarr Senior Housing—FHA Project Number 083–EE089, McCarr, Kentucky. This project is located in the rural Appalachian Mountain region of Kentucky and is experiencing difficulty in leasing units to the very low-income elderly.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 16, 2009

Reason Waived: This regulatory waiver was granted to assist the project in alleviating its current vacancy problems. The rural location does not offer many amenities such as shopping, medical facilities, pharmacies, etc., to attract qualified very low-income elderly applicants. Additional measures were instituted to improve occupancy but have not been successful. Waiver of this regulation allowed the owner to fill vacant units and thereby stabilize the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730, extension 2598.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: William Johnson Manor—FHA Project Number 075–EH383, Deer Park, Wisconsin. The project experienced difficulty leasing units to the very low-income elderly and requested a waiver of this restriction in order to permit admission of lower-income, near elderly applicants where there are no very low-income elderly applicants to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 6, 2009.

Reason Waived: This regulatory waiver was granted to assist the project in alleviating its vacancy problems at the time of the waiver request. Waiver of this regulation allowed the managing agent to lease units to very low-income, near elderly applicants when, at the time of the request, there were no very low-income elderly applicants on the waiting list, allowing stabilization of the project's then financial status and prevention of foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Harry and Velma Hamilton Villa—FHA Project Number 075–EE056, Wausau, Wisconsin. The property experienced difficulty in leasing vacant units to the very low-income elderly. The owner requested a waiver of this restriction in order to permit admission of low-income, near elderly applicants when, at the time of the request, there was no very low-income elderly applicant to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 6, 2009.

Reason Waived: This regulatory waiver was granted to cure the project's then vacancy problems. Waiver of this regulation permitted admission of applicants who meet the definition of low-income, near elderly, enabling the owner to improve the financial status of the project and prevent foreclosure. First priority was committed to be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Red Lake Senior Apartments—FHA Project Number 092–EE087, Red Lake, Minnesota. This project experienced difficulty in leasing its vacant units to very low-income elderly applicants. The owner requested a waiver of this restriction in order to allow admission of low-income, near elderly applicants to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 3, 2009.

Reason Waived: This regulatory waiver was granted to assist the property with its then vacancy problems. The project is located within the boundaries of the Red Lake Reservation with no ability to attract very low-income elderly applicants. At the time of the request, there were four vacant units with three prospective applicants on the waiting list under the age of 62. Granting this waiver allowed the managing agent to rent to qualifying low-income near elderly applicants, provided flexibility to fill vacant units, and allowed the project to operate successfully and achieve full occupancy so that the project would not fail.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Alice Henke Villa—FHA Project Number 075–EE042, Tomahawk, Wisconsin. This project is located in a small, rural community with few conveniences for senior citizens. The owner/managing agent is having difficulty in maintaining full occupancy at the project.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 13, 2009.

Reason Waived: Waiver of this requirement was granted to allow the owner/managing agent flexibility in renting up vacant units. The property, at the time of the waiver request, had 6 vacant units with no one on the waiting list. Providing a waiver of the very low-income elderly restriction would assist in stabilizing the project's then financial status and prevent foreclosure. First priority was committed to be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Maple Leaf Housing—FHA Project Number 103–EE006, Plymouth, Nebraska. The owner requested waiver of the age and income requirement for this Supportive Housing for the Elderly project to assist with the vacancy problems they are experiencing.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 10, 2009.

Reason Waived: Waiver of this regulation was granted to allow the owner/managing agent to rent vacant units to applicants who are low-income and near-elderly. The owner/managing agent aggressively marketed the property; however, a market analysis indicated that there was insufficient demand to fill units with low-income near elderly applicants. The property, at the time of the waiver request, had six vacant units with a low-income 37-year old applicant with a disability on the waiting list. Providing for a waiver of this requirement allowed the project to stabilize its then financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Phelps Senior Housing—FHA Project Number 083–EE078, Phelps, Kentucky. This project is located in a rural area in the Appalachian Mountain region of Kentucky with no demand for low-income elderly housing. The project experienced difficulty in leasing its vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 10, 2009.

Reason Waived: Waiver of the regulations governing age and income requirements has been granted to permit admission of low-income, near elderly applicants. The market analysis indicated that there was insufficient demand to fill the units with very low-income elderly applicants and applicants 62 years of age and older. This waiver allowed the owner to fill vacant units and develop a waiting list by expanding their leasing options with lower-income applicants between 55 and 62 years of age. First priority was committed to be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Mary John Vanderloop Villa—FHA Project Number 075–EE022, Minocqua, Wisconsin. The project experienced difficulty in leasing units to the very low-income elderly applicants. The owner requested a waiver of this restriction in order to permit admission of lower-income, near elderly applicants where there are no very low-income applicants to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 20, 2009.

Reason Waived: Waiver of the regulations governing age and income requirements has been granted to permit admission of low-income, near elderly applicants. The owner/managing agent was unable to attract very low-income elderly persons. The project was having financial difficulty at the present occupancy level and the waiver would help the project achieve and maintain full occupancy for the long term viability of the project and continue serving a population in need of decent, safe, sanitary and affordable housing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Charles Hill Villa—FHA Project Number 075–EE061, Park Falls, Wisconsin. This project was having difficulty in maintaining sustaining occupancy and experiencing financial difficulty. The owner requested permission to admit low-income, near elderly applicants to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 20, 2009.

Reason Waived: Waiver of the regulations governing age and income requirements was granted to assist the project in reaching full occupancy. The owner/managing agent will be able to expand their leasing options, and stabilize the project's then financial status and prevent foreclosure. First priority will be given to all qualified eligible applicants who meet the elderly and very-low income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Richard Gurnoe Villa—FHA Project Number 075–EE138, Bayfield, Wisconsin. This project experienced severe difficulty in maintaining sustaining full occupancy.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 24, 2009.

Reason Waived: Waiver of the regulations governing age and income requirements was granted to assist the project in reaching full occupancy. The owner/managing agent was able to expand leasing options, and stabilize the project's then financial status and prevent foreclosure. First priority was committed to be given to all qualified eligible applicants who meet the elderly and very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–8000, telephone number (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Dallas Housing Authority, (TX009), Dallas, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 9, 2009.

Reason Waived: The HA requested a waiver and additional 45 days to submit its fiscal year December 31, 2007, audited data. The HA's original request dated March 28, 2008, was initially granted on May 16, 2008, with an extension of the due date to December 31, 2008, to submit audited data. The HA was granted the waiver and the additional time to allow the auditors ample time to thoroughly review all documents in order to approve and sign the audit. The HA was directed to submit its financial data for fiscal year end December 31, 2007, no later than February 14, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Rotan Housing Authority, (TX182), Rotan, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the Housing Authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 15, 2009.

Reason Waived: The HA's audited financial submission for FYE December 31, 2007, was rejected by the Financial Assessment Subsystem (FASS) staff and the HA was given 15 days to correct and resubmit the financial data. The HA made the corrections and presented to the auditor, however, during this time the Executive Director resigned and accepted a new position. In the transition, the financial submission was not electronically submitted to the REAC by the resubmission due date causing the HA to receive a Late Presumptive Failure (LPF) score of zero. The circumstances that prevented the HA from resubmitting the audited financial data by the due date were beyond the control of the HA. The waiver granted invalidation of the LPF and resubmission of the audited financial data.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Peekskill Housing Authority, (NY082), Peekskill, NY.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the Housing Authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 16, 2009.

Reason Waived: The HA requested a waiver of its fiscal year ending (FYE) March 31, 2008, audited financial submission. The HA's waiver request stated that the termination of the Executive Director and other pertinent staff delayed the completion of the audit and the timely submission to REAC. The waiver was granted because the circumstances were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Knox County Housing Authority, (TN111), Knoxville, TN.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 26, 2009.

Reason Waived: The HA's requested additional time to submit its fiscal year end (FYE) March 31, 2008, audited data which was due to the Department on December 31, 2008. The HA's waiver request stated that the audit scope needed to be expanded as a result of recently discovered evidence of fraudulent activity involving payroll disbursements. The waiver was granted because the circumstances that prevented the HA from submitting the audited financial data by the due date were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Avery Housing Authority, (TX310), Avery, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 9, 2009.

Reason Waived: The HA requested a waiver of its audited financial submission for fiscal year ending (FYE) March 31, 2008. The HA did not submit its audited financial information to the Department by December 31, 2008, due date as a result of a communication error relating to the receipt of operating subsidy audit add-on funding. The HA was granted a waiver and the financial information was submitted on January 19, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Cass Lake Housing and Redevelopment Authority, (MN100), Cass Lake, MN.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 18, 2009.

Reason Waived: The HA's audited financial submission was rejected by the Financial Assessment Subsystem (FASS) staff and the HA was given 15 days to correct and resubmit the financial data. As a result of a communication error the financial was not electronically submitted to REAC by the resubmission due date and the HA received a Late Presumptive Failure (LPF) score of zero. The waiver was granted because the circumstances were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the City of Bremerton, (WA003), Bremerton, WA.

Nature of Requirement: The regulation establishes certain reporting compliance dates.

The audited financial statements are required to be submitted to the Real Estate

Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 24, 2009.

Reason Waived: The HA requested a waiver of its audited financial submission for fiscal year ending (FYE) September 30, 2008. The HA also administers Section 8 Housing Choice Voucher Program for the HA of Jefferson County (WA068) and the HA of Mason County (WA059) that have FYEs of June 30, 2008 and September 30, 2008, respectively. These housing authorities were unable to submit its audited financial information to the Department until April 20, 2009. Specifically, the Department is updating the FASS audited electronic submission template to be compliant with asset management. Additionally, the HA requested additional time to submit the audited financial data once the system is operational. The waiver was granted because it was beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Hialeah Housing Authority, (FL066), Hialeah, FL

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 31, 2009.

Reason Waived: The HA stated that its audited financial submission was rejected by the Financial Assessment Subsystem (FASS) staff twice. The HA stated that the corrections were made for the first rejection. However, additional rejection issues were cited for the second rejection that were not included for the first rejection. Rejecting the submission a second time by REAC was necessary to ensure accurate financial data for the HA's Housing Choice Voucher (HCV). The waiver was granted. Specifically, the HA in conjunction with FASS staff are working closely to resolve reporting differences under the HCV program.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: Dallas Housing Authority, (TX009), Dallas, Texas

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 31, 2009.

Reason Waived: The HA requested an original waiver of its audited financial submission due date of December 31, 2007 and was granted a due date extension to December 31, 2008. Subsequently, the HA requested and was granted a second extension to February 14, 2009. This third request for an extension to April 15, 2009 resulted from the need to transfer records between the former and current audit firms.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the Town of Erath (LA047), Erath, LA

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 26, 2009.

Reason Waived: The housing authority (HA) requested a waiver from physical inspections under the Physical Assessment Subsystem (PASS) for fiscal years ending (FYE) December 31, 2008 and 2009. The HA had severe damage to twenty two units from Hurricane Ike. In addition, there are still fourteen units off-line from Hurricane Ike. The waiver was granted because the circumstances were beyond the control of the HA.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone number (202) 475–8988.

• *Regulation:* 24 CFR 905.10(f)(2) and (i)(5).

Project/Activity: Chester Housing Authority (CHA), Chester, PA, Feb 6 Nature of Requirement:

Nature of Requirement: The regulations restrict use of Replacement Housing Factor (RHF) funds to the development of public housing rental units.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 6, 2009.

Reason Waived: Additional funds were needed to construct a CHA administration building to serve as a gateway within a distressed area. Regulatory waiver was granted to secure project and a timely release of funds.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number (202) 402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Charlotte Housing Authority (CHA), NC.

Nature of Requirement: The regulation requires HUD review and approval of certain legal documents related to mixed-finance development before closing occurs and public housing funds released. CHA requested a waiver of prior HUD approval for Seneca Woods.

Granted By: Paula O. Blunt, General Assistant Secretary for Public and Indian Housing.

Date Granted: January 9, 2009.

Reason Waived: CHA agreed to submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the required legal documents. The waiver streamlined the review process, expedited closing and enhanced public housing production.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number (202) 402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Charlotte Housing Authority (CHA), NC.

Nature of Requirement: The regulation requires HUD review and approval of certain legal documents related to mixed-finance development before closing occurs and public housing funds released. CHA requested a waiver of prior HUD approval for Fairmarket Square.

Granted By: Paula O. Blunt, General Assistant Secretary, Public and Indian Housing.

Date Granted: January 16, 2009.

Reason Waived: CHA agreed to submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the required legal documents. The waiver streamlined the review process, expedited closing and enhanced public housing production.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number (202) 402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: King County Housing Authority (KCHA), WA.

Nature of Requirement: The regulation requires HUD review and approval of certain legal documents related to mixed-finance development before closing occurs and public housing funds released. CHA requested a waiver of prior HUD approval for Eastbridge.

Granted By: Paula O. Blunt, General Assistant Secretary for Public and Indian Housing.

Date Granted: February 13, 2009.

Reason Waived: KCHA agreed to submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the required legal documents. The waiver streamlined the review process, expedited closing and enhanced public housing production.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number (202) 402–4181.

• *Regulation:* 24 CFR 960.206(b).

Project/Activity: Allentown Housing (AHA), Allentown, PA.

Nature of Requirement: The regulation requires non-discriminatory and equal opportunity for waiting list admissions. AHA requested a ranking admission preference to people with specific disabilities.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 26, 2009.

Reason Waived: The waiver permitted occupancy by a household with a person who has severe and persistent mental illness and who was ready for discharge from Community Rehabilitation Residences, at risk of homelessness and a client of Lehigh County's supportive services program. Any individual, regardless of income, who completes the registration process, is designated as a client of the County.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone number (202) 402–4181.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Santa Clara (HACSC), San Jose, CA.

Nature of Requirement: The regulation states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size. The HACSC requested a waiver so to provide reasonable accommodations to a person with disabilities.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 18, 2009.

Reason Waived: The applicant required an accessible, zero-bedroom unit in proximity to care providers. For this applicant to pay no more than 40 percent of adjusted income toward the family share, HACSC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number (202) 708–0477.

• *Regulation:* 24 CFR 982.637(a)(2).

Project/Activity: Augusta Housing Authority, (AHA) Augusta, ME.

Nature of Requirement: The regulation states that a PHA may not commence continued tenant-based assistance for occupancy of a new unit so long as any family member owns title or other interest in the prior home.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 7, 2009.

Reason Waived: The subject homeownership unit is subject to court action for substandard roof repairs. A mortgage moratorium was instituted under a USDA Rural Development 502 loan. Until repair of the roof, the applicant received a waiver for temporary tenant-based HCV rental assistance for up to 24 months.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone number (202) 708–0477.

[FR Doc. E9–15482 Filed 6–29–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Small Businesses in the Capital Region (Washington, DC) of the United States

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for small businesses in the national capital region of the United States that are interested in doing business with the Department. The bureaus within the Department of the Interior are partnering in this exciting event that will promote small business contracting opportunities across the board. This workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department. Following the workshop, businesses will also participate in a roundtable discussion and breakout work sessions that will allow them to talk with departmental representatives and prime contractors.

DATES: The workshop will be held on July 9, 2009, from 8:30 a.m. to 4 p.m. Doors open at 7:30 a.m.

ADDRESSES: The workshop will be held at the Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC 20001. Register online at: *http://www.doi.gov/osdbu*.

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1849 C Street, NW., MS 2252 MIB, Washington, DC 20240, telephone 877–375–9927.

SUPPLEMENTARY INFORMATION:

In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2008, the Department awarded 55 per cent of its $2.6 billion in contracts to small businesses. This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The vendor outreach session for the southeast region was held in Atlanta, Georgia, on February 11, 2009, at the Georgia International Convention Center and another session was held in Portland, Oregon, on May 13, 2009, at the Portland Convention Center. The Department's presenters will focus on contracting and subcontracting opportunities and how small businesses can better market services and products. Over 4,000 small businesses have been targeted for this event. If you are a small business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional outreach events will be held scheduled from FY 2010 around the country. Dates, time and locations have yet to be determined.

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. E9–15373 Filed 6–29–09; 8:45 am]

BILLING CODE 4210–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs is submitting an information collection request to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for clearance and extension. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112 through June 30, 2009. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit comments on or before *July 30, 2009.*

ADDRESSES: Written comments may be sent to the Desk Officer for the Department of the Interior, Office of Management and Budget, Office of Regulatory Affairs via facsimile to (202) 395–5806, or by e-mail to *OIRA_DOCKET@omb.eop.gov.*

Send a copy of your comments to Sue V. Settles, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MIB Mail Stop 4513, Washington, DC 20240, or fax to (202) 208–2648 or e-mail to *Sue.Settles@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Interested persons can obtain additional information regarding collection requests with no additional charge by contacting Sue V. Settles, Chief, Division of Human Services, at (202) 513–7621.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian Tribe may reassume jurisdiction over Indian child proceedings when a State asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918. A 60-day notice for public comments was published in the **Federal Register** on February 27, 2009. No comments were received regarding this collection.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, 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 information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please submit your comments to the persons listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days. To ensure maximum consideration, send your comments to OMB by the date listed in the **DATES** section near the beginning of this notice.

III. Data

OMB Control Number: 1076–0112.

Title: Tribal Reassumption of Jurisdiction over Child Custody Proceedings, 25 CFR 13.

Brief Description of Collection: The collection of information will ensure that the provisions of Public Law 95–608 are met. Any Indian Tribe that became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. The collection of information provides data that will be used in considering the petition and feasibility of the plan of the Tribe for reassumption of jurisdiction over Indian child custody proceedings. We collect the following information: full name, address, and telephone number of petitioning Tribe or Tribes; a Tribal resolution; estimated total number of members in the petitioning Tribe or Tribes with an explanation of how the number was estimated; current criteria for Tribal membership; citation to provision in Tribal constitution authorizing the Tribal governing body to exercise jurisdiction over Indian child custody matter; description of Tribal court; copy of any Tribal ordinances or Tribal court rules establishing procedures or rules for exercise of jurisdiction over child custody matters; and all other information required by 25 CFR 13.11. Response is required to obtain or retain a benefit.

Type of Review: Renewal.

Respondents: Federally recognized Tribes who submit Tribal reassumption petitions for review and approval by the Secretary of the Interior.

Number of Respondents: 2.

Estimated Time per Response: 8 hours.

Frequency of Response: Annually.

Total Annual Burden Hours: 16 hours.

Dated: June 24, 2009.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. E9–15406 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N120; 40120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Etowah River Habitat Conservation Plan, Bartow, Cherokee, Cobb, Dawson, Forsyth, Paulding, and Pickens Counties, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of applications for incidental take permits (ITPs) for the Etowah River Habitat Conservation Plan (HCP); availability of proposed HCP and environmental assessment (EA); request for comment.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a proposed HCP, 13 accompanying ITP applications, and an EA related to proposed development that would effect three fish species in a covered area encompassing 3,773 square kilometers (km^2) (932,000 ac). Each county and municipality seeking incidental take authorization has prepared a separate application in conjunction with the one HCP and EA. The HCP analyzes the take

of the Federally endangered fish species amber darter (*Percina antesella*) and Etowah darter (*Etheostoma etowahae*), and the Federally threatened Cherokee darter (*Etheostoma scotti*), incidental to the applicants' regulation of development and construction in their respective jurisdictions. The applicants request ITPs under the Endangered Species Act of 1973 (Act), as amended. The Applicants' HCP describes the mitigation and minimization measures proposed to address the effects on the species.

DATES: We must receive any written comments on the ITP applications, EA, and HCP at our Regional Office (*see* **ADDRESSES**) on or before August 31, 2009.

ADDRESSES: Documents will be available for public inspection by appointment during normal business hours at, and are available from, the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: David Dell); or Fish and Wildlife Service, West Park Center, Suite D, 105 West Park Drive, Athens, GA 30606.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator (*see* **ADDRESSES**), telephone: 404/679–7313; or Ms. Robin Goodloe, Field Office Project Manager (*see* **ADDRESSES**), at 706/613–9493, ext. 221.

SUPPLEMENTARY INFORMATION: We announce the availability of a proposed HCP, 13 accompanying ITP applications, and an EA, which analyzes the take of the amber darter, Etowah darter, and Cherokee darter incidental to programs in the 13 applicant counties and municipalities. The applicants request 25-year ITPs under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to NEPA regulations (40 CFR 1506.6). Further, we specifically solicit information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

An assessment of the likely environmental impacts associated with the implementation of the Etowah River HCP, the EA considers the environmental consequences of two alternatives and the proposed action. The proposed action alternative is issuance of the ITPs and implementation of the HCP as submitted by the Applicants. The HCP covers activities associated with the new development and redevelopment of land by participating local governments and private entities, except for: (1) Construction of sewer lines, (2) stormwater runoff from roads constructed by jurisdictions, and (3) utility crossings of streams that are not part of a larger common plan of development or sale. The HCP also addresses water supply planning by participating local governments and their partners. Avoidance, minimization, and mitigation measures include stormwater management, riparian buffers, erosion and sediment control, stream crossing requirements, and a reservoir siting protocol.

Public Comments

If you wish to comment, you may submit comments by any one of several methods. Please reference ''Etowah River HCP'' in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Covered Area

The area covered by the Etowah Aquatic HCP includes all those portions of the Etowah basin that are in Bartow, Cherokee, Cobb, Dawson, Forsyth, Paulding, and Pickens Counties, Georgia, including all municipalities that lie within that area, as well as the portion of the City of Roswell (Roswell lies in another county not participating in the HCP) that lies within the Etowah Basin. The entire covered area encompasses 3,773 km² or approximately 932,000 ac. The following counties and municipalities have applied for ITPs under the Etowah Aquatic HCP:

Bartow County	TE179735–0
Cherokee County	TE179736–0
Paulding County	TE179734–0
Pickens County	TE179722–0
The City of Acworth	TE179730–0
City of Ball Ground	TE179731–0
City of Canton	TE179727–0
City of Dawsonville	TE179723–0
City of Dallas	TE179724–0
City of Holly Springs	TE179733–0
City of Roswell	TE179732–0
City of Waleska	TE179726–0
City of Woodstock	TE179728–0

Next Steps

We will evaluate these ITP applications, including the HCP and any comments we receive, to determine whether these applications meet the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITPs. If we determine that the requirements are met, we will issue the ITPs for the incidental take of the amber darter, Etowah darter, and Cherokee darter.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: June 9, 2009.

Cynthia K. Dohner,

Deputy Regional Director.

[FR Doc. E9–15401 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Merced Wild and Scenic River Comprehensive Management Plan; Yosemite National Park; Mariposa and Madera Counties, CA; Notice of Intent To Prepare Environmental Impact Statement

Summary: Pursuant to the National Environmental Policy Act (Pub. L. 91–190) and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is reopening public scoping for planning and environmental impact analysis for a new Merced Wild and Scenic River Comprehensive Management Plan and Environmental Impact Statement (NMRP/EIS) in Yosemite National Park. The NMRP/EIS

will serve as a comprehensive ''blueprint'' sufficient to guide future management of the Merced River corridor in Yosemite National Park.

Background: In 1987, Congress designated 122 miles of the Merced River and its South Fork as Wild and Scenic, including the 81 miles within Yosemite National Park and the El Portal Administrative Site. The National Park Service (NPS) completed the Merced Wild and Scenic River Comprehensive Management Plan/Final Environmental Impact Statement in August 2000. Soon after, two citizens' groups filed suit in the U.S. District Court for the Eastern District of California, resulting in the production of the Merced Wild and Scenic River Revised Comprehensive Management Plan/Supplemental Environmental Impact Statement (MCMP/SEIS) in 2005. Subsequent court proceedings culminated in a 2006 U.S. District Court decision that invalidated the park's MCMP/SEIS and ordered the NPS to prepare a new comprehensive management plan. On January 9, 2007, the NPS proposed a 33-month timeline to the court for the preparation of the NMRP/EIS, which would result in a Record of Decision on September 30, 2009. The NPS initiated public scoping for the NMRP on March 28, 2007; a Notice of Intent to prepare an Environmental Impact Statement was published on April 11, 2007 in the **Federal Register** (public scoping lasted 74 days, closing on June 10, 2007). Concurrently, the NPS appealed U.S. District Court's decision that the 2005 MCMP/SEIS was invalid. On March 27, 2008 the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) issued an opinion affirming the judgment of the District Court and expanding the scope of what the NPS had previously understood must be included in a legally valid Merced Wild and Scenic River Comprehensive Management Plan. Consequently the NPS is reopening public scoping for the NMRP/EIS so as to provide additional opportunity for public involvement in developing a new plan.

The NMRP/EIS will address: resource protection; existing and potential development of lands and facilities; user capacities; and the kinds and amounts of use which the river area can sustain without impacting values for which it was designated. It will identify specific management measures that will be used to protect and enhance the outstandingly remarkable values (ORVs) for each of the river segments, including the scenic, recreational, geological, fish and wildlife, historic, cultural or other similar values. In addition, the NMRP/EIS will address the quantity and mixture of recreation and other public uses that may be permitted without adverse impact to the ORVs, including a discussion of the maximum number of people that may be received at the river while protecting and enhancing the values for which the Merced and South Fork Merced were included in the Wild and Scenic Rivers system.

Scoping and Public Meetings: The purpose of re-opening scoping is to receive any new public comments about issues and concerns that should be addressed in the New MRP/EIS, including a suitable range of alternatives, appropriate mitigation measures, and the nature and extent of potential environmental impacts. Given that all prior scoping comments remain under consideration, at this time only pertinent information or concerns not previously provided need to be submitted. Broad participation of interested individuals and organizations is important to the planning and analysis process. During this concluding phase, the public is invited to share new concerns that should be considered in the development of the draft NMRP/EIS. Yosemite National Park will also further consult tribal, federal, state, and local governments. The renewed opportunity for scoping will be posted on the park Web site, and press releases will be distributed to local and regional media. Dates, times, specific locations, and additional information will be released through regional and local news sources, and updates will be posted at *www.nps.gov/yose/planning/mrp.* In addition, updates regarding future public involvement opportunities, including workshops for alternatives formulation and later release of the draft NRMP/EIS for public review, will be similarly announced in regional news media and on the park's Web site, and through direct mailings.

Written comments should be addressed to the Superintendent, Attn: Merced River Plan, Yosemite National Park, PO Box 577, Yosemite National Park, CA 95389, or faxed to (209) 379–1294, and must be postmarked or transmitted not later than 60 days from the publication date of this NOI in the **Federal Register** (immediately upon confirmation of this date it will be posted on the park's Web site and announced via local and regional press). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Decision Process: At this time it is expected that following due consideration of all comments on the draft NRMP/EIS as may be received, the final NMRP/EIS would be made available during spring-summer 2012, with preparation of a Record of Decision anticipated during September, 2012. As a delegated EIS the official responsible for final approval of the NMRP/EIS is the Regional Director, Pacific West Region. Subsequently the official responsible for implementing the approved new Merced Wild and Scenic River Comprehensive Management Plan would be the Superintendent, Yosemite National Park.

Dated: March 10, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E9–15429 Filed 6–29–09; 8:45 am]

BILLING CODE 4312–FY–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS0100.L51010000.ER0000. LVRWF09F8770; NVN–085077 and NVN–085801; 09–08807; TAS: 14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed NextLight Renewable Power, LLC, Silver State North Solar Project and Silver State South Solar Project, Primm, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM), Las Vegas Field Office, will prepare one environmental impact statement (EIS) for two proposed solar energy projects located on public lands in Clark County, Nevada. Publication of this notice initiates the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process. Comments on issues may be submitted in writing until July 30, 2009. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/lvfo.html.*

ADDRESSES: Submit comments related to the project by any of the following methods:

- *E-mail:* *Nextlight_Primm_NV_SEP@blm.gov*
- *Fax:* (702) 515–5010, attention Gregory Helseth.
- *Mail:* BLM, Las Vegas Field Office, Attn: Gregory Helseth, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, contact Gregory Helseth, Renewable Energy Project Manager, at (702) 515–5173; or e-mail at *Nextlight_Primm_NV_SEP@blm.gov*.

SUPPLEMENTARY INFORMATION: NextLight Renewable Power, LLC, has submitted two applications for rights-of-way for the construction, operation, maintenance, and termination of two solar energy generation sites. The two applications are identified as NVN–085077 Silver State South Solar Project, and NVN–085801 Silver State North Solar Project. The proposed projects would consist of photovoltaic panels and related right-of-way appurtenances, including a substation and switchyard facilities. The proposed projects, combined, would produce approximately 400 megawatts of electricity, and would be located on approximately 7,840 acres of public lands east of Primm, Nevada.

Issues that are anticipated to be addressed in this EIS include threatened and endangered species impacts, visual impacts, socioeconomic impacts, and cumulative impacts. The EIS will analyze the site-specific impacts on air quality, biological resources, cultural resources, water resources, geological resources and hazards, hazardous materials handling, land and airspace use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, waste management, worker safety, and fire protection, as well as facility design engineering, efficiency, reliability, transmission system engineering, transmission line safety, and nuisance. Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, as well as individuals or organizations that may be interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Documents pertinent to this project may be examined at the Las Vegas Field Office. Additional opportunities for public participation will be provided upon publication of the draft EIS.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR Part 2800)

Robert B. Ross Jr.,

Las Vegas Field Manager.

[FR Doc. E9–15470 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000]

Notice of Availability of Maps and Additional Public Scoping for Programmatic Environmental Impact Statement To Develop and Implement Agency-Specific Programs for Solar Energy Development; Bureau of Land Management Approach for Processing Existing and Future Solar Applications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) and the Bureau of Land Management (BLM) (the Agencies) are announcing the availability of maps depicting solar energy study areas to be analyzed in their joint Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development (Solar PEIS) and the opportunity for additional public scoping. The BLM is issuing this Notice to inform the public of the availability of the solar energy study area maps; to solicit public comments for consideration in identifying environmental issues, existing resource data, and industry interest with respect to the solar energy study areas in particular; and to explain how the BLM will address existing and future solar energy development applications on BLM-administered lands.

DATES: The time period for public comments starts with the publication of this notice in the **Federal Register** and will continue through July 30, 2009. Comments received or postmarked after that date will be considered to the extent practicable.

ADDRESSES: You may submit written comments by the following methods:

- Electronically, using the online comment form available on the project Web site: *http://solareis.anl.gov.* This is the preferred method of commenting.
- In writing, addressed to: Solar Energy PEIS, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/900, Argonne, IL 60439.

Availability of Maps: Maps of the solar energy study areas are available electronically from the project Web site: *http://solareis.anl.gov.* The maps may also be obtained from the following BLM offices:

Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004.

California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, CA 95825.

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.

Nevada State Office, 1340 Financial Blvd., Reno, NV 89520.

New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505.

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: For further information contact: Linda Resseguie, BLM Washington Office, *linda_resseguie@blm.gov,* 202–452–7774; or Lisa Jorgensen, Department of Energy, Golden Field Office, *lisa.jorgensen@go.doe.gov,* 303–275–4906. You may also visit the Solar PEIS Web site at *http://solareis.anl.gov.*

SUPPLEMENTARY INFORMATION: On May 29, 2008, the Agencies published a Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Solar Energy Development (73 FR 30908). Subsequently, the Agencies held a series of public scoping meetings, received public comments, and published a scoping summary report, available at *http://solareis.anl.gov.*

On March 11, 2009, the Secretary of the Interior issued Secretarial Order No. 3285, which announced a policy goal of identifying and prioritizing specific locations best suited for large-scale production of solar energy. Also, the BLM received funding from the American Recovery and Reinvestment Act to accelerate permitting of renewable energy projects on public lands. A portion of that funding is being used to enhance the Solar PEIS by enabling in-depth environmental analysis of 24 specific tracts of public

lands which have excellent solar development potential and limited resource conflicts.

The Solar PEIS will help BLM identify lands appropriate for solar energy development and establish a comprehensive list of mitigation requirements applicable to all future solar energy development on BLM-administered lands. As part of the Solar PEIS, the Agencies will conduct in-depth environmental analyses of 24 solar energy study areas for the purpose of determining whether such areas should be designated as Solar Energy Zones (SEZs), specific locations determined best suited for large-scale production of solar energy.

The solar energy study areas were identified based on preliminary results of California's Renewable Energy Transmission Initiative, the Western Governors' Association Western Renewable Energy Zone and Transmission Study, and existing BLM resource information. Criteria used to identify solar energy study areas include requirements that the area: be a minimum size of 2,000 acres, be near existing roads and existing or designated transmission line routes, and have a slope of less than 5%. Sensitive resource areas were also removed from consideration, including the following categories of lands:

(1) National Landscape Conservation System lands (except that lands within the California Desert Conservation Area that have no other special designation may be included in a solar energy study area);

(2) Threatened and endangered species designated critical habitat;

(3) Back-country byways;

(4) Areas of known Tribal concern;

(5) Areas of known high cultural site density; and

(6) Areas designated for right-of-way avoidance or right-of-way exclusion in BLM land use plans. Such areas include BLM areas of critical environmental concern, areas with important visual resources, special recreation management areas, areas allocated to maintain wilderness characteristics, wildlife movement corridors, and areas where the BLM has made a commitment to take certain actions with respect to sensitive species habitat.

Some or all of the solar energy study areas may be found appropriate for designation as SEZs as described above. The Agencies are making the maps of the solar energy study areas available to the public and soliciting written comments to provide an opportunity for public input as part of the ongoing Solar PEIS analysis. Specifically, the Agencies request information and comments on the potential for significant impacts of solar energy development on known resources within a solar energy study area and the economic viability of solar energy development within specific areas. No additional public meetings are planned prior to the release of the draft Solar PEIS; however, the public will have additional opportunities to comment when the draft Solar PEIS is released.

The BLM's objective for the Solar PEIS is to create a more efficient process for authorizing solar energy development on public lands that would also:

- Facilitate near-term utility-scale solar energy development on public lands;
- Minimize potential environmental, social, and economic impacts;
- Provide the solar industry flexibility in proposing and developing solar energy projects (location, facility size, technology, etc.);
- Optimize existing transmission corridors; and
- Standardize the authorization process for solar energy development on BLM-administered lands.

The BLM will continue to accept new solar applications. The BLM is in the process of considering alternative procedures, such as non-competitive and competitive, application fees, and diligent development requirements, for solar energy development applications within the solar energy study areas. Any entity with an existing application for lands within the solar energy study areas received by the BLM prior to June 30, 2009 will continue to be processed under the BLM's current procedures. Applications received after June 30, 2009 for lands inside the solar energy study areas will be subject to the Record of Decision (ROD) for the Solar PEIS and any alternative procedures developed by BLM for non-competitive and competitive processes. All applications received for lands outside of the solar energy study areas will be processed under the BLM's current procedures. Any right-of-way grant for a solar energy application issued after the BLM's ROD for the Solar PEIS may be issued subject to the requirements adopted in the ROD.

The Agencies invite interested Federal and State agencies, organizations, Native American tribes and members of the public to submit written comments to assist in identifying significant environmental issues, existing resource data, and industry interest with respect to the solar energy study areas. You may submit comments in writing using one of the methods listed in the ''**ADDRESSES**'' section above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comments—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. E9–15471 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona, California, Colorado, Nevada, New Mexico, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 676,048 acres of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, on behalf of the Bureau of Land Management (BLM) to protect and preserve solar energy study areas for future solar energy development. This notice segregates the lands for up to 2 years from surface entry and mining while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by September 28, 2009.

ADDRESSES: Comments and meeting requests should be sent to the BLM Director, 1849 C Street NW. (WO350), Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, BLM, 202–452–7774, or one of the following BLM State Offices.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Land Management at the address above and its petition requests the Secretary of the Interior to withdraw, subject to valid existing rights, approximately 676,048 acres of public lands located in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah from

settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws. The lands are identified in the maps referenced in the Notice of Availability of Maps and Additional Public Scoping for Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development; Bureau of Land Management Approach for Processing Existing and Future Solar Applications to be published in the **Federal Register**. Copies of the maps are available online at *http://solareis.anl.gov* and are also available from the BLM offices listed below:

Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004.
California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, CA 95825.
Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.
Nevada State Office, 1340 Financial Blvd., Reno, NV 89520.
New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505.
Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.

The lands depicted on the maps described above are located within the following townships:

Arizona

Gila and Salt River Meridian

T. 9 N., R. 9 W.
T. 5 N., R. 15 W.
Tps. 4 and 5 N., R. 16 W.
Tps. 2 S., Rs. 6 and 7 W.

California

San Bernardino Meridian

Tps. 8 and 9 N., R. 4 E.
Tps. 7, 8, and 9 N., R. 5 E.
Tps. 8 and 9 N., R. 6 E.
Tps. 1 and 2 N., Rs. 17, 18, 19, and 20 E.
T. 4 S., R. 14 E.
Tps. 3, 4, and 5 S., Rs. 15 and 16 E.
Tps. 3, 4, 5, 6, 16, and 17 S., R. 17 E.
Tps. 1, 6, 16, and 17 S., R. 18 E.
Tps. 1 and 6 S., R. 19 E.
Tps. 4, 5, 6, and 7 S., R. 20 E.
Tps. 4, 5, 7, and 8 S., R. 21 E.
Tps. 4, 5, 6, and 7 S., R. 22 E.
T. 5 S., R. 23 E.

Colorado

New Mexico Principal Meridian

Tps. 34, 35, and 45 N., R. 8 E.
Tps. 32 and 45 N., R. 9 E.
T. 32 N., R. 10 E.
Tps. 37 and 38 N., R. 12 E.
T. 38 N., R. 13 E.

New Mexico

New Mexico Principal Meridian

Tps. 23, 24, and 25 S., R. 1 W.
Tps. 22, 23, 24, and 25 S., R. 2 W.
Tps. 22, 23, and 24 S., R. 3 W.
Tps. 23 and 24 S, R. 4 W.
Tps. 24 and 25 S., R. 1 E.
Tps. 17, 18, and 19 S., Rs. 8 and 9 E.

Nevada

Mount Diablo Meridian

Tps. 3 and 4 N., Rs. 39 and 40 E.
Tps. 1, 2, and 3 N., R. 64 E.
Tps. 1 and 2 N., R. 65 E.
T. 6 S., R. 41 E.
Tps. 13 and 14 S., R. 47 E.
T. 14 S., R. 48 E.
Tps. 5, 6, 7, 16, 17, and 18 S., R. 63 E.
Tps. 1, 16, 17, and 18 S., R. 64 E.
T. 1 S., R. 65 E.
Tps. 11 S., Rs. 69 and 70 E.

Utah

Salt Lake Meridian

Tps. 30 S., Rs. 10, 11, and 12 W.
Tps. 27, 33, and 34 S., R. 14 W.
Tps. 33 and 34 S., R. 15 W.

The BLM's petition for withdrawal has been approved by the Secretary of the Interior.

The purpose of the proposed withdrawal is to protect and preserve solar energy study areas for future solar energy development for a 20-year period.

Records relating to the petition may be examined by contacting Linda Resseguie at the above address or by calling 202–452–7774.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Director at the address noted above.

Comments including names and street addresses of respondents will be available for public review at the BLM Washington Office at the address noted above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Director no later than September 28, 2009. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

Any application for a withdrawal will be processed in accordance with the regulations set forth in 43 CFR 2310.1–2.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands referenced in this notice will be segregated from settlement, sale, location, or entry under the general land laws, including the mining laws, unless an application is denied or canceled or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the site may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Authority: 43 CFR 2310.3–1.

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. E9–15472 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N127; 81420–1113–0000–F3]

Safe Harbor Agreement for the City of Elk Grove's Shed B and Whitelock Parkway Drainage Corridors, in Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application and proposed safe harbor agreement.

SUMMARY: This notice advises the public that the City of Elk Grove (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival Permit through a Safe Harbor Agreement (Agreement) for the Federally threatened species valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and the Federally threatened giant garter snake (*Thamnophis gigas*). The Agreement is available for public comment (*see* below).

DATES: Written comments should be received on or before July 30, 2009.

ADDRESSES: Comments should be addressed to Mr. Rick Kuyper, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting the individual named above. You may also make an appointment to view the documents at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permit that is issued pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act), encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c).

We have worked with the applicant to develop the proposed Agreement for the conservation of the valley elderberry longhorn beetle and the giant garter snake on lands owned and managed by the applicant in Sacramento County, California. The property subject to this Agreement (Enrolled Property) consists of approximately 4.03 miles of drainage corridor (*i.e.,* Shed B Channel, tributary to Shed B Channel, and Whitelock Parkway Channel) in the City of Elk Grove, Sacramento County, California. The Enrolled Property consists of the existing drainage corridor that extends west from Bruceville and Poppy Ridge roads to Franklin Boulevard (Shed B Channel), existing drainage corridor that extends from Bruceville Road to Bighorn Boulevard (Whitelock Parkway Channel), and a tributary of the Shed B Channel that is located between the main channel stem and Franklin High Road approximately 0.5 mile south of Whitelock Parkway. Development within the surrounding area consists of single-family homes and a school. Prior to the construction of the Shed B and Whitelock Parkway drainage channels, no suitable habitat for the giant garter snake or valley elderberry longhorn beetle existed. The current uses of the drainage corridors are flood control and water quality treatment. The drainage corridors drain directly into the Service's Stone Lakes National Wildlife Refuge (approximately 2.1 miles downstream).

The applicant proposes to allow for the establishment of suitable breeding and dispersal habitat for the two Federally listed species on the Enrolled Property and to implement avoidance and minimization measures during the maintenance activities described in the paragraph below. We expect that the proposed activities will benefit these species due to an increase in dispersal opportunities throughout the Enrolled Property, thus resulting in a net conservation benefit for the two Federally listed species. The Agreement includes a monitoring component that will aid the applicant in developing management strategies that can ensure the successful enhancement and management of breeding and dispersal habitat for the two Federally listed species. The proposed duration of the Agreement and the enhancement of survival permit is 30 years.

The Agreement states that incidental take of the two Federally listed species may occur during maintenance activities within the drainage corridors, including: debris or obstruction removal; silt, sand, or sediment removal; vegetation control in channels; repair of previous erosion control work; minor erosion control work; bridge washing and painting; and geotechnical sampling.

Upon approval of this Agreement, and consistent with the our Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), we would issue a permit to the applicant authorizing take of the valley elderberry longhorn beetle and the giant garter snake incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the Enrolled Property including normal, routine land management activities, and to return to pre-Agreement conditions (baseline).

Public Review and Comments

We have made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of our Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the applicant for take of the valley elderberry longhorn beetle and the giant garter snake incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: June 23, 2009.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E9–15395 Filed 6–29–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–631]

In the Matter of Certain Liquid Crystal Display Devices and Products Containing the Same; Notice of Commission Decision To Affirm-In-Part and Reverse-In-Part a Final Initial Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part and reverse-in-part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 by the respondents' products in the above-captioned investigation, and has issued a limited exclusion order directed against products of respondents Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, New Jersey; and Sharp Electronics Manufacturing Company of America, Inc. of San Diego, California (collectively ''Sharp''); and cease and desist orders direct against products of Sharp Electronics Corp. and Sharp Electronics Manufacturing Co.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 25, 2008, based on a complaint filed by Samsung Electronics Co., Ltd. (''Samsung'') of Korea. 73 FR 4626–27. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display (''LCD'') devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,193,666; 6,771,344 (''the '344 patent''); 7,295,196; and 6,937,311 (''the '311 patent''). The complaint further alleges the existence of a domestic industry as to each asserted patent. The Commission's notice of investigation named the following respondents: Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, New Jersey; and Sharp Electronics Manufacturing, Company of America, Inc. of San Diego, California.

On January 26, 2009, the ALJ issued his final ID finding a violation of section 337 by respondents as to the '311 and '344 patents only, and issued his recommended determinations on remedy and bonding. On February 9, 2009, Sharp and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. The IA and Samsung filed responses to the petitions on February 17, 2009.

On March 30, 2009, the Commission determined to review: (1) The ALJ's construction of the claim term ''domain dividers'' found in the '311 patent;'' (2) the ALJ's determination that Sharp's LCD devices infringe the '311 patent; (3) the ALJ's determination that the '311 patent is not unenforceable; and (4) the ALJ's determination that the asserted claims of the '344 patent are not invalid as anticipated by U.S. Patent No. 5,309,264 (''the '264 patent'').

The Commission requested the parties to respond to certain questions concerning the issues under review and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 74 FR 15301–02 (April 3, 2009).

On April 10 and April 17, 2009, respectively, complainant Samsung, the Sharp respondents, and the IA filed briefs and reply briefs on the issues for which the Commission requested written submissions. Also, the Commission received four submissions from interested non-parties on the issues of remedy, the public interest, and bonding.

Having reviewed the record in this investigation, including the final ID and the parties' written submissions, the Commission has determined to affirm-in-part and reverse-in-part the ID. Particularly, the Commission has construed the term ''domain dividers'' in claims 6 and 8 of the '311 patent to be ''apertures formed in the conductive layer comprising the electrode.'' Further, the Commission has reversed the ALJ's ruling of infringement of the '311 patent by Sharp's LCD devices and determined that these devices do not infringe claims 6 and 8 under the Commission's claim construction of ''domain dividers.'' Also, the Commission has taken no position on the validity of the '311 patent pursuant to 35 U.S.C. 112, ¶ 1, under the ALJ's construction of ''domain dividers,'' or the unenforceability of the '311 patent. In addition, the Commission has affirmed the ALJ's finding that claims 7 and 8 of the '344 patent are not invalid in view of the '264 patent, and affirm his determination of a violation of section 337 with respect to the '344 patent.

Further, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) A limited exclusion order prohibiting the unlicensed entry of LCD devices, including display panels and modules, and LCD televisions or professional displays containing the same that infringe claims 7 or 8 of the '344 patent, that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Sharp, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns; and (2) cease and desist orders prohibiting Sharp Electronics Corp. and Sharp Electronics Manufacturing Co. from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, LCD devices, including display panels and modules, and LCD televisions or professional displays containing the same that are covered by claims 7 or 8 of the '344 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission determined that no bond is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42, 210.45, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42, 210.45, 210.50).

By order of the Commission.
Issued June 24, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–15387 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *JLG Enterprises, et al.,* D. Minn., Civil No. 09–00708, was lodged with the United States District Court for the District of Minnesota on June 23, 2009.

This proposed Consent Decree concerns a complaint filed by the United States against Jeffrey Gilbert, individually and d/b/a/JLG Enterprises; Gary Gilbert, individually and d/b/a JLG Enterprises; JLG Enterprises, a Minnesota general partnership; and JLG Enterprises of Hermantown, LLP, a Minnesota limited liability partnership, pursuant to sections 301(a), 309 and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1319 and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and/or perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Joshua M. Levin, U.S. Department of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *JLG Enterprises,* DJ # 90–5–1–1–18212.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 300 South 4th Street, Suite 202, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Maureen M. Katz,

Assistant Section Chief, Environment & Natural Resources Division.

[FR Doc. E9–15389 Filed 6–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Federal Water Pollution Control Act

Notice is hereby given that on June 12, 2009, a proposed Consent Decree was filed with the United States District Court for the District of Nebraska in *United States et al.* v. *City of West Point, et al.,* No. 08–00293 (D. Neb.). The proposed Consent Decree entered into by the United States, the State of Nebraska, and West Point Dairy Products, LLC resolves the United States' claims against West Point Dairy Products, LLC under Sections 307 and 309 of the Federal Water Pollution Control Act (Clean Water Act) at its West Point, Nebraska facility. Under the terms of the Consent Decree, West Point Dairy Products, LLC shall pay a civil penalty of $75,000 each to the United States and State of Nebraska and dismiss with prejudice its cross-claims against the City of West Point, Nebraska.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *City of West Point, et al.,* DJ Ref. No. 90–5–1–1–09326.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Nebraska, 487 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508, and at the Environmental Protection Agency, Region 7, 901 N. 5th St., Kansas City, KS 66101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–15412 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 1, 2009, and published in the **Federal Register** on April 9, 2009, (74 FR 16234), Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Fenethylline (1503)	I
Methaqualone (2565)	I
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine. (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I

Drug	Schedule
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Tilidine (9750)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk. (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Lipomed, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15445 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 23, 2009, and published in the **Federal Register** on March 2, 2009 (74 FR 9107), Sigma Aldrich Manufacturing LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperdine (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Sigma Aldrich Manufacturing LLC., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Sigma Aldrich Manufacturing LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21

CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15443 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 8, 2009, Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4–Methoxyamphetamine (7411)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 31, 2009.

Dated: June 22, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15442 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 22, 2008, and published in the **Federal Register** on September 29, 2008, (73 FR 56612), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to produce sodium oxybate for sale to customers.

One objection was received; however, the objector is not registered with DEA as a bulk manufacturer of Gamma Hydroxybutyric Acid (GHB). DEA has determined that the objection received is without merit and does not warrant denial of the application. DEA has also determined that the Food and Drug Administration does not preclude the sale of GHB to other manufacturers for the development of generic GHB products.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: June 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15447 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 19, 2008, and published in the **Federal Register** on June 27, 2008, (73 FR 36573), Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702–3232, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for sale to its customers.

One objection was received; however, the objector is not registered with DEA as a bulk manufacturer of Gamma Hydroxybutyric Acid (GHB). DEA has determined that the objection received is without merit and does not warrant denial of the application. DEA has also determined that the Food & Drug Administration does not preclude the sale of GHB to other manufacturers for the development of generic GHB products.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Norac Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Norac Inc. to ensure that the company's registration is consistent with the public interest. The investigation included the inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: June 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15446 Filed 6–29–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 25, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (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). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/ *Fax:* 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: General Inquiries to State Agency Contacts.

OMB Control Number: 1220–0168.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Annual Burden Hours: 15,927.

Total Estimated Annual Costs Burden: $0.

Description: BLS awards funds to State Agencies in order to assist them in operating Labor Market Information and/or Occupational Safety and Health Statistics Federal/State cooperative statistical programs. To ensure a timely flow of data and to be able to evaluate and improve the programs it is necessary to conduct ongoing communications between BLS and the State partners dealing with, for example, deliverables, program enhancements, and administrative issues. For additional information, see related notice published at Vol. 74 FR 12386 on March 24, 2009.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title of Collection: American Time Use Survey (ATUS).

OMB Control Number: 1220–0175.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 13,240.

Total Estimated Annual Burden Hours: 4,358.

Total Estimated Annual Costs Burden: $0.

Description: The ATUS is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities. The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

The ATUS data are collected on an ongoing, monthly basis, allowing analysts to identify changes in how people spend their time. The survey sample is drawn from households completing their final month of interviews for the Current Population Survey (CPS). Households are selected to ensure a representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. The interview asks respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection.

For additional information, see related notice published at Vol. 74 FR 14160 on March 30, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–15433 Filed 6–29–09; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–061]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council's Aeronautics, Audit and Finance, Exploration, Human Capital, Science, and Space Operations Committees. The agendas for the committees include updates from the prior NAC meeting held at NASA Headquarters in April 2009 as well as discussion of potential

recommendations. The draft meeting agendas for each committee will be available on the Council's Web site *http://www.nasa.gov/nac* by June 26, 2009.

DATES: Aeronautics, Tuesday, July 14, 2009, 11:15 a.m.–3:34 p.m., Room 6B42.

Aeronautics, Wednesday, July 15, 2009, 8:30 a.m.–3 p.m., Room 6B42.

Audit and Finance, Wednesday, July 15, 2009, 8:30 a.m.–11 a.m., Room 8D48.

Exploration, Wednesday, July 15, 2009, 8:30 a.m.–12 p.m., Room 7H45.

Human Capital, Wednesday, July 15, 2009, 9 a.m.–2 p.m., Room 5J46.

Science, Tuesday, July 14, 2009, 12:45 p.m.–4:45 p.m., Room 8R40.

Science, Wednesday, July 15, 2009, 8:30 a.m.–3:30 p.m., Room 8R40.

Space Operations, Wednesday, July 15, 2009, 8:30 a.m.–12 p.m., Room 7D61.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marguerite Broadwell, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1894.

SUPPLEMENTARY INFORMATION: The Committee meetings will be open to the public up to the seating capacity of each room. It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 7 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Marla K. King via e-mail at *marla.k.king@nasa.gov* or by telephone at (202) 358–1148. Persons with disabilities who require assistance should indicate this.

Kathy Dakon,

Acting Division Director, Advisory Committee Management Division, National Aeronautics and Space Administration.

[FR Doc. E9–15475 Filed 6–29–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0054]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 2, 2009 (74 FR 9112).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements''.

3. *Current OMB approval number:* 3150–0039.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act 1954, as amended (the Act).

6. *Who will be required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

7. *An estimate of the number of annual responses:* 151.

8. *The estimated number of annual respondents:* 91.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1307.

10. *Abstract:* 10 CFR Part 140 of the NRC's regulations specifies information to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Act, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Act, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 30, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The Acting NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 19th day of June, 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–15407 Filed 6–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0233]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the required to be submitted:

1. *The title of the information collection:* NRC Form 790, Classification Record.

2. *Current OMB approval number:* 3150–0052.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC licensees, contractors, and certificate holders who classify and declassify NRC information.

5. *The number of annual respondents:* 450.

6. *The number of hours needed annually to complete the requirements or request:* 30.

7. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, contractors, and only a certificate holder who classifies and declassifies NRC information in accordance with Executive Order 12958, as amended, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives.

Submit, by August 31, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0233. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0233. Mail comments to Acting NRC Clearance Officer, Tremaine Donnell (T–5–F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Tremaine Donnell (T–5 F53), Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone (301) 415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 15th day of June, 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–15409 Filed 6–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0263]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1229.

FOR FURTHER INFORMATION CONTACT: Aaron Szabo, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1985 or e-mail to *Aaron.Szabo@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' is temporarily identified by its task number, DG–1229, which should be mentioned in all related correspondence. DG–1229 is proposed Revision 2 of Regulatory Guide 1.159, dated October 2003.

The general requirements for applications for license termination and decommissioning nuclear power, research, and test reactors appear in Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the Code of Federal Regulations (10 CFR Part 50). Subsequent to the original publication of this regulatory guide in August 1990, the NRC promulgated amendments to 10 CFR Part 50 in the **Federal Register** on September 22, 1998 (63 FR 50465). Various amendments modified 10 CFR 50.33(k), 10 CFR 50.75, ''Reporting and Recordkeeping for Decommissioning Planning,'' and 10 CFR 50.82(b), which require operating license applicants and existing licensees to submit information on how reasonable assurance will be provided that funds are available to decommission the facility. The NRC promulgated additional amendments to 10 CFR 50.75 on December 24, 2002, in the **Federal Register** (67 FR 78332). As amended, 10 CFR 50.75 establishes requirements for indicating how this assurance will be provided; namely, the amount of funds that must be provided, including updates; the methods to be used for assuring funds; and provisions contained in trust agreements for safeguarding decommissioning funds. This document provides guidance to applicants and licensees of nuclear power, research, and test reactors concerning methods acceptable to the staff of the NRC for complying with requirements in the rules regarding the amount of funds for decommissioning. It also provides guidance on the content and form of the financial assurance mechanisms in those rule amendments.

II. Further Information

The NRC staff is soliciting comments on DG–1229. Comments may be accompanied by relevant information or supporting data and should mention DG–1229 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, 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–2009–0263. 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–1229 may be directed to the NRC contact, Aaron Szabo at (301) 415–1985 or e-mail to *Aaron.Szabo@nrc.gov.*

Comments would be most helpful if received by September 9, 2009. Comments received after that date will be considered if it is practical to do so, but the 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–1229 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML091420226.

In addition, regulatory guides are available for inspection at the 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 can also 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 19th day of June, 2009.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–15280 Filed 6–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0261]

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 June 4, 2009 to June 17, 2009. The last biweekly notice was published on June 16, 2009 (74 FR 28575).

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.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek 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 *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The electronic filing 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).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their 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: May 21, 2009.

Description of amendments request: The amendments would remove the Table of Contents (TOC) from the Technical Specifications (TSs) and place them under licensee control.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed change is administrative and affects control of a document, the TOC, listing the specifications in the plant TSs. Transferring control from the Nuclear Regulatory Commission (NRC) to CCNPP [Calvert Cliffs Nuclear Power Plant] (the licensee) does not affect the operation, physical configuration, or function of plant equipment or systems. It does not impact the initiators or assumptions of analyzed events; nor does it impact the mitigation of accidents or transient events. The change has no impact on, and hence cannot increase, the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed change is administrative and does not alter the plant configuration, require installation or new equipment, alter assumptions about previously analyzed accidents, or impact the operation or function of plant equipment or systems. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

The proposed change is administrative. The TOC is not required by regulation to be in the TS. Removal does not impact any safety assumptions or have the potential to reduce a margin of safety as described in the TS Bases. The change involves a transfer of control of the TOC from the NRC to CCNPP. No change in the technical content of the TS specifications is involved. Consequently, transfer from the NRC to CCNPP has no impact on the margin of safety, and hence cannot 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 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.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 5, 2009.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Section 6.7.C to change requirements related to the schedule for performing the 10 CFR Part 50, Appendix J, Type A test. Specifically, the proposed change would change the TS from requiring the test ''no later than April 2010'' to ''prior to startup from the April 2010 refuel outage.''

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:

1.0 Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The change does not impact the function of any structure, system or component that affects the probability of an accident or that supports mitigation or consequences of an accident previously evaluated. The proposed change involves testing of Primary Containment but does not impact containment design or performance requirements. The proposed change ensures that the Type A test is performed prior to establishing Primary Containment following the April 2010 Refuel[ing] Outage. The proposed change does not affect reactor operations or accident analysis and there is no change to the radiological consequences of a previously analyzed accident. The operability requirements for accident mitigation systems remain consistent with the licensing and design basis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2.0 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 involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The proposed change involves the scheduling of the Type A test and does not alter the way the test is performed. Type A tests have been previously performed and are well within the design capability of station structures, systems or components. No new or different types of equipment will be permanently installed or operated. Operation of existing installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3.0 Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These changes do not change any existing design or operational requirements and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed change affects the schedule for performing the Type A test and does not affect the way the test is

performed or margins for the existing Primary Containment. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. 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: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: John Boska.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 13, 2009.

Description of amendment request: The proposed change will modify the Technical Specification (TS) 2.1.1.1, ''DNBR,'' to revise the Departure from Nucleate Boiling Ratio (DNBR) safety limit based upon the Combustion Engineering (CE) 16 x 16 Next Generation Fuel (NGF) design and the associated Departure from Nucleate Boiling (DNB) correlations.

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.

No changes to plant equipment or operating procedures are required due to the change in the safety limit for DNBR. This change does not impact any of the accident initiators. The analyses of the reload are performed using NRC [U.S. Nuclear Regulatory Commission] approved methodologies to ensure the Specified Acceptable Fuel Design Limits (SAFDLs), of which DNBR is one, are not violated. The current DNBR setpoint continues to ensure automatic protective action is initiated to prevent exceeding the proposed DNBR safety limit.

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. The proposed change supports the loading and use of Next Generation Fuel (NGF) at ANO–2 [Arkansas Nuclear One, Unit 2] as previously approved by the NRC.

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.

The use the NRC-approved NGF WSSV–T correlation with the ABB–NV correlation to establish a new bounding DNBR safety limit of 1.23, preserves the DNBR margin of safety at a 95/95 level. The Core Protection Calculator (CPC) DNBR power adjustment addressable constant BERR1 is calculated based on the WSSV–T and ABB–NV CHF [critical heat flux] correlations such that a CPC trip at a DNBR of 1.25 using the CE–1 CHF correlation assures that the bounding DNBR safety limit of 1.23 for the WSSV–T and ABB–NV CHF correlations will not be violated during normal operation and AOOs [anticipated operational occurrences] to at least a 95/95 probability/confidence level.

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.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 15, 2009.

Description of amendment request: The amendment would modify Technical Specification (TS) 6.6.5, ''Core Operating Limits Report (COLR),'' to minimize the number of U.S. Nuclear Regulatory Commission (NRC)-approved references consistent with the guidance provided in NRC Generic Letter 88–16, ''Removal of Cycle-Specific Parameter Limits from Technical Specifications,'' dated October 3, 1988. This request also fulfills the commitment made in the licensee's letter to the NRC dated March 11, 2008, ''Response to Request for Additional Information License Amendment Request to Revise Technical Specification 6.6.5, Core Operating Limits Report.''

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 to the list of NRC-approved methodologies listed in TS 6.6.5 are administrative in nature and have no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Changes to the calculated core operating limits may only be made using NRC-approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 [Title 10 of the Code of Federal Regulations Section 50.59] process.

The proposed change will minimize and clarify the listing of the NRC-approved methodologies that are currently being used in the ANO–2 [Arkansas Nuclear One, Unit 2] core designs and the determination of the operating limits for those cores. Assumptions used for accident initiators and/or safety analysis acceptance criteria are not altered by the proposed changes.

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 to the list of topical reports used to determine the operating limits has no impact on any plant configurations or on system performance that is relied upon to mitigate the consequences of an accident. These changes are administrative in nature and do not result in a change to the physical plant or to the modes of operation defined in the facility license.

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.

The proposed change does not amend the cycle specific parameter limits located in the COLR from the values presently required by the TS. The individual specifications continue to require operation of the plant within the bounds of the limits specified in COLR. The proposed change to the list of analytical methods referenced in the COLR is administrative in nature.

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.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: May 22, 2009.

Description of amendment request: The proposed amendment will modify the Waterford Steam Electric Station, Unit 3 (Waterford 3), Technical Specification (TS) 6.9.1.11 to minimize the number of references that reflect U.S. Nuclear Regulatory Commission (NRC)-approved methods used in establishing the Core Operating Limits Report (COLR) parameter limits, consistent with the guidance provided in NRC Generic Letter 88–16, ''Removal of Cycle-Specific Parameter Limits from Technical Specifications,'' dated October 3, 1988.

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 changes to the list of NRC-approved methodologies listed in TS 6.9.1.11.1 are administrative in nature and have no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Changes to the calculated core operating limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 [Title 10 of the Code of Federal Regulations Section 50.59] process.

The proposed changes will minimize and clarify the listing of the NRC-approved methodologies that are currently being used in the Waterford 3 core designs and the determination of the operating limits for those cores.

Assumptions used for accident initiators and/or safety analysis acceptance criteria are not altered by the proposed changes.

Therefore, the proposed changes do 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 changes to the list of topical reports used to determine the operating limits has no impact on any plant configurations or on system performance that is relied upon to mitigate the consequences of an accident. These changes are administrative in nature and do not result in a change to the physical plant or to the modes of operation defined in the facility license.

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.

The proposed changes do not amend the cycle specific parameter limits located in the COLR from the values presently required by the TS. The individual specifications continue to require operation of the plant within the bounds of the limits specified in COLR.

The proposed changes to the list of analytical methods referenced in the COLR are administrative in nature.

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 Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (QCPS), Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: April 7, 2009.

Description of amendment request: The proposed amendment deletes a no longer applicable footnote from the DNPS Technical Specifications (TS), corrects administrative errors in the titles of analytical methods, and deletes historical analytical methods no longer applicable in DNPS and QCPS TS. The proposed amendment also deletes a license condition from the DNPS and QCPS Renewed Facility Operating License (FOL).

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

DNPS TS 3.4.5, ''RCS Leakage Detection Instrumentation,'' establishes the applicability and requirements for equipment used to quantify unidentified reactor coolant system operational leakage (*i.e.,* the drywell floor drain sump monitoring system). The proposed change deletes a footnote that established a limited duration alternative to these requirements for DNPS Unit 3.

The deletion of the footnote restores DNPS TS 3.4.5 requirements to the requirements prior to NRC approval of an emergency license amendment, which provided an alternative means to demonstrate TS compliance. In that the condition necessitating the footnote (*i.e.,* a failed component) has been resolved (*i.e.,* repair of the failed component), the footnote is no longer applicable. The proposed change will have no effect on any accident initiator or precursor previously evaluated and will not change the manner in which the plant is operated. Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

DNPS and QCNPS TS 5.6.5 ''Core Operating Limits Report (COLR),'' lists the NRC-approved analytical methods that are used at DNPS and QCNPS to determine core operating limits. The proposed changes will correct administrative errors in the titles of several analytical methods in DNPS and QCNPS TS 5.6.5.b. The proposed changes will also delete historical analytical methods from DNPS and QCNPS TS 5.6.5.b that are no longer applicable, as well as renumber the remaining analytical methods.

The correction of administrative errors in the titles of analytical methods does not change the content or application of the methods. Similarly, the deletion of non-applicable analytical methods does not affect the ability to accurately model core behavior, including the determination of core operating limits, for the fuel that is currently loaded in the DNPS and QCNPS reactors. Therefore, the proposed changes will have no effect on any accident initiator or precursor previously evaluated and will not change the manner in which the core is operated. Thus, the proposed changes do not have any effect on the probability of an accident previously evaluated.

Finally, the proposed changes will delete a license condition in the DNPS Units 2 and 3 and QCNPS Units 1 and 2 Facility

Operating Licenses (FOLs) that limits the maximum average fuel rod burnup to 60 gigawattdays per metric ton of uranium (GWD/MTU) until a generic environmental assessment that supports an extended limit is approved.

The proposed deletion of the license condition is justified by completion of generic environmental assessments for DNPS and QCNPS (*i.e.,* as required by the license condition). As such, these license conditions are no longer required or applicable. Therefore, the proposed change will have no effect on any accident initiator or precursor previously evaluated and will not change the manner in which the core is operated. Thus, the proposed changes do not have any effect on the probability of an accident previously evaluated.

The proposed changes to the DNPS TS 3.4.5, DNPS and QCNPS TS 5.6.5.b, and the deletion of the Renewed FOL license conditions do not affect the ability to successfully respond to previously evaluated accidents and does not affect the radiological assumptions used in the evaluations for both DNPS and QCNPS.

Thus, the proposed changes will have no effect on the type or amount of radiation released, and will have no effect on predicted offsite doses in the event of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to DNPS TS Section 3.4.5, DNPS and QCNPS TS Section 5.6.5, and the proposed deletion of Renewed FOL license conditions do not affect the performance of any structure, system, or component credited with mitigating any accident previously evaluated.

The deletion of the footnote from DNPS TS 3.4.5 restores TS requirements to the requirements prior to NRC approval of an August 2008 emergency license amendment. The proposed deletion of the footnote does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

The NRC-approved analytical methodologies in TS 5.6.5.b are used to accurately model core behavior, including the determination of core operating limits, for the fuel that is currently loaded in the DNPS and QCNPS reactors. These methodologies do not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

The existing Renewed FOL license condition limits fuel burnup until completion of a generic environmental assessment. In June 2004, the NRC issued NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 16, ''Quad Cities Nuclear Power Station, Units 1 and 2,'' and Supplement 17, ''Dresden Nuclear Power Station, Units 2 and 3.'' Based on the completion and conclusions of these generic environmental assessments for DNPS and QCNPS, the license condition limiting fuel burnup for each unit has been satisfied. As such, these license conditions are no longer required or applicable.

The proposed deletion of the license condition does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to DNPS TS 3.4.5, DNPS and QCNPS TS 5.6.5.b, and the DNPS and QCNPS Renewed FOLs (*i.e.,* deletion of the fuel burnup license condition) will not affect the ability to quantify unidentified RCS leakage, accurately model core behavior for the currently loaded fuel, and ensure compliance with NRC-approved LTRs.

As such, the proposed changes do not modify the safety limits or setpoints at which protective actions are initiated and do not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. Therefore, the proposed changes provide an equivalent level of protection as that currently provided.

Therefore, the 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 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: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell A. Gibbs.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 13, 2009.

Description of amendment request: The amendment would delete those portions of Technical Specifications superseded by 10 CFR Part 26, Subpart I. This change is consistent with NRC approved Revision 0 to Technical Specification Task Force (TSTF) ''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 NRC staff issued a notice of availability of the model safety evaluation and model no significant hazards consideration (NSHC), using the consolidated line-item improvement process for referencing in license amendment applications in the **Federal Register** on December 30, 2008 (73 FR 79923). The licensee affirmed the applicability of the following NSHC determination in its application dated April 13, 2009.

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 (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 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

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 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 shut down 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 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, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment requests: March 4, 2009.

Description of amendment requests: The proposed amendments would change the Technical Specification (TS) Section 5.5.12 (Primary Containment Leakage Rate Testing Program) and change TS Section 3.6.1.3 (Primary Containment Isolation Valves) to remove the repair criterion for Main Steamline Isolation Valves (MSIVs) that fail their as-found leakage rate acceptance criterion found in current Surveillance Requirement 3.6.1.3.9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change to TS 5.5.12 does not modify existing structures, systems or components (SSCs) of the plant, and it does not introduce new SSCs. It does not change assumptions, methodology, likelihood, or results of previously evaluated accidents in the Updated Final Safety Analysis Report [UFSAR]. It does not change operating procedures or administrative controls that affect the functions of SSCs. By excluding Main Steam pathway leakage from Type A, and Type B and C test results, this change will make the Primary Containment Leakage Rate Testing Program more closely aligned with the assumptions used in associated accident dose consequence analyses.

The proposed change [to TS 3.6.1.3] to eliminate the repair criterion (i.e., as-left leakage limit) for MSIVs that fail their as-found leak test, does not change how the MSIVs function in response to any event, nor the likelihood of occurrence of any accident previously identified in the UFSAR. Repairing the MSIVs to an as-left leakage value, which can be higher than the currently specified value in TS that reliably assures the next as-found leakage test will be within limits is sufficient to ensure that the calculated dose consequences of any event involving MSIV leakage as an effluent pathway remain within analyzed limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis for MSIV performance.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since Main Steam pathway leakage bypasses the containment and its filtration system (Standby Gas Treatment System) during a Loss-of-Coolant Accident (LOCA), the effect on release to the environment is analyzed and specifically accounted for in the DAEC dose analysis methodology approved by Amendments 237 and 241. This proposed change to exclude Main Steam pathway leakage from Type A, and Type B and C test results does not change dose analysis values, and thus does not affect actual margin in the dose analysis.

Similarly, removing the as-left repair criterion for MSIVs from the TS has no impact on the assumptions for MSIV leakage used in the accident analysis, which are based upon the as-found MSIV leakage limit, not the as-left leakage. As long as the as-left leakage value gives high confidence that the as-found leakage will remain within limits over the next operating cycle until the next as-found leak test is conducted, the assumptions of the dose consequence analyses are not adversely impacted and the previously calculated results remain bounding.

Therefore, the 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 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: Mr. R. E. Helfrich, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 17, 2009.

Description of amendment request: The proposed amendment would revise Operating License No. DPR–49 by changing ''FPL Energy Duane Arnold, LLC'' to ''NextEra Energy Duane Arnold, LLC,'' where appropriate, to reflect the renaming of FPL Energy Duane Arnold, LLC to NextEra Energy Duane Arnold, LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request is for administrative changes only. No actual facility equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

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 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

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 will 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: Mr. R. E. Helfrich, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 2, 2009.

Description of amendment request: The proposed amendment would (1) delete Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revise SR 3.1.3.3, (2) remove reference to SR 3.1.3.2 from Required Action A.3 of TS 3.1.3, ''Control Rod OPERABILITY,'' and (3) revise Example 1.4–3 in TS Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. The changes are in accordance with U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) traveler TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action.''

The NRC issued a ''Notice of Availability of Model Application Concerning Technical Specification Improvement To Revise Control Rod Notch Surveillance Frequency, Clarify SRM Insert Control Rod Action, and Clarify Frequency Example'' in the **Federal Register** on November 13, 2007 (72 FR 63935). In its application dated June 2, 2009, the licensee affirmed the applicability of the model no significant hazards consideration (NSHC).

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 proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.'' TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) Revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY'', (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, 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 does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, 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

TSTF–475, Revision 1 will: (1) [Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY'', (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, ''Source Range Monitoring Instrumentation,'' and (3)] revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. [The GE Nuclear Energy Report, ''CRD Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency.] Therefore, the proposed changes in TSTF–475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves NSHC.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc. (SNC), Docket Nos. 50–321, 50–366, 50–348, 50–364, 50–424, 50–425, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2 (FNP), Houston County, Alabama, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2 (HNP), Appling County, Georgia, Vogtle Electric Generating Plant, Units Nos. 1 and 2 (VEGP), Burke County, Georgia

Date of amendment request: May 19, 2009.

Description of amendment request: The proposed amendment would delete those portions of technical specifications (TS) superseded by Title 10 of the Code of Federal Regulations (10 CFR) Part 26, Subpart I. This change is consistent with the Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) 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: SNC has reviewed the no significant hazards determination published on December 30, 2008 (73 FR 79925), as part of the CLIIP Notice of Availability. SNC has concluded that the determination presented in the notice is applicable to FNP, HNP, and VEGP. SNC has evaluated the proposed changes to the TS using the criteria in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration. An analysis of the issue of no significant hazards consideration 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 (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 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 amendment request involves no significant hazards consideration.

Attorney for licensee: FNP: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, *HNP:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, *VEGP:* Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Melanie C. Wong.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 5, 2009.

Description of amendment request: The proposed amendment would correct an error by changing a logic connector from ''OR'' to ''AND'' between Technical Specification (TS) 3.3.2, ''ESFAS [Engineered Safety Feature Actuation System] Instrumentation,'' Condition I, Actions I.2.1 and I.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed amendment corrects an identified error by only changing a logic connector between two TS actions. The change only restores the sequential nature of these required actions consistent with other similar TS actions where, if conditions warrant, the movement of the plant to lower modes is required (*i.e.,* to Mode 3, to Mode 4, etc.). In addition, this change does not alter the completion times for these actions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

By correcting the logic connector between these two TS actions, this change only restores consistency with other similar TS actions where movement of the plant to lower modes is required. The change does not alter the expected outcome of the required actions nor does it change the completion times for these actions. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

By only correcting the logic connector between the required actions, the proposed change does not alter the expected outcome of the required actions nor does it change the completion times for these actions. 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 5, 2009.

Description of amendment request: The proposed amendment would change the technical specifications to revise the completion time (CT) from 1 hour to 24 hours for Condition B of TS 3.5.1, ''Accumulators,'' and its associated Bases. Condition B of TS 3.5.1 currently specifies a CT of one hour to restore a reactor coolant system (RCS) accumulator to operable status when declared inoperable due to any reason except not being within the required boron concentration range.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration, 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 basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049, ''Risk-Informed Evaluation of an Extension to Accumulator Completion Times,'' evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049 is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency (CDF) less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RG) 1.174 and 1.177 for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP–15049 evaluation as a worst case data point. In addition, WCAP–15049 states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, 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 Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049 evaluation demonstrates that the small increase in risk due to increasing the accumulator allowed outage time (AOT) is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

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 involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049 evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049 evaluation.

Therefore, this 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 5, 2009.

Description of amendment request: The proposed amendment would provide alternatives for valve position verification in various Required Actions and Surveillance Requirements in Technical Specification 3.6.3, ''Containment Isolation Valves.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment will revise the position verification requirements for manual containment isolation devices that are locked, sealed, or otherwise secured in the closed position. Revising the verification requirements will not introduce any physical changes or result in the equipment being operated in a new or different manner. All systems, structures, and components previously required for mitigation of a transient remain capable of performing their designed functions. Furthermore, although the proposed change would revise the position verification requirements, no physical change is being made to the assumed position of the valves for accident analysis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios or failure mechanisms are introduced as a result of this proposed change. The proposed amendment would revise the position verification requirements but not alter any valve positions. With no changes to the plant lineup, no new or different accidents are possible. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Changes to the position verification requirements of normally closed manual containment isolation valves that are locked, sealed, or otherwise secured do not change the position/status of these valves. The proposed amendment does not impact the ability of these valves to perform their design function of controlling containment leakage rates during design basis radiological accidents. 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

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.*

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 12, 2008, as supplemented by letters dated August 28, 2008, September 15, 2008, October 17, 2008, December 15, 2008, December 18, 2008 (two letters), April 9, 2009, and May 20, 2009.

Brief description of amendment: The amendment revised the Technical Specification (TS) Sections 2.1, ''Limiting Safety System Setting,'' 3.1, ''Reactor Protection System,'' 3.2, ''Protective Instrument Systems,'' associated Surveillance Requirements, and other TS with similar requirements as these instrumentation TS sections.

Date of Issuance: June 12, 2009.

Effective date: As of the date of issuance, and shall be implemented within 180 days.

Amendment No.: 236.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register**: April 22, 2008 (73 FR 21659).

The supplemental letters dated August 28, 2008, September 15, 2008, October 17, 2008, December 15, 2008, December 18, 2008 (two letters), April 9, 2009, and May 20, 2009, the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 12, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 22, 2008.

Brief description of amendment: The proposed amendment would revise the Technical Specification (TS) to remove the requirement to perform quarterly closure time testing of the Main Steam Isolation Valves (MSIVs) by deleting TS Surveillance Requirement 4.7.D.1.c. Operability testing of the MSIVs will continue to be required by the Vermont Yankee Inservice Test Program and the safety functions of the MSIVs will continue to be contained in the Vermont Yankee Updated Final Safety Analysis Report and Vermont Yankee Technical Requirements Manual.

Date of Issuance: June 17, 2009.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 237.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 2008 (73 FR 65692).

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 2, 2009.

Brief description of amendment: The amendment deletes those portions of Technical Specifications superseded by 10 CFR Part 26, Subpart I. This change is consistent with NRC-approved Revision 0 to Technical Specification Task Force Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26,'' as announced in the **Federal Register** on December 30, 2008 (73 FR 79923) as part of the consolidated line item improvement process.

Date of issuance: June 9, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment No.: 181.

Renewed Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 2009 (74 FR 12395). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 23, 2008.

Brief description of amendments: The amendments revised the Sequoyah

Nuclear Plant (SQN), Units 1 and 2 Technical Specifications (TSs) by a partial adoption of Technical Specifications Task Force (TSTF) Traveler, TSTF–491, Revision 2, ''Removal of Main Steam and Feedwater Valve Isolation Times.'' The amendments only revised TS 3.7.1.5, ''Main Steam Line Isolation Valves,'' by relocating the main steam isolation valve closure time from Surveillance Requirement 4.7.1.5.1 to the Bases. The amendments deviated from TSTF–491 in that the current SQN TS 3.7.1.6 ''Main Feedwater Isolation, Regulating, and Bypass Valves,'' and associated surveillance requirements do not include the main feedwater valve closure times, and thus, TSTF–491 changes to TS 3.7.1.6 were not applied to the SQN TSs.

Date of issuance: June 12, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 324 and 316.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in **Federal Register**: January 13, 2009 (74 FR 1716). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 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, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek 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 *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system.

The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday,

[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.

excluding government holidays. The electronic filing 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).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 4, 2009, as supplemented by letter dated June 6, 2009.

Brief description of amendment: The amendment authorizes a temporary one-time change to Technical Specification (TS) 3.8.1 Required Action B.4 Completion Time. The amendment would add a note allowing a Completion Time of ''17 days'', on a temporary one-time basis. This one-time allowance will expire at 10:15 a.m. on June 12, 2009.

Date of issuance: June 8, 2009.

Effective date: As of the date of issuance, and shall be implemented immediately.

Amendment No.: 294.

Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Public comments requested as to the proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, State consultation, and final NSHC determination are contained in a safety evaluation dated June 8, 2009.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: John P. Boska.

Dated at Rockville, Maryland, this 19th day of June 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–15117 Filed 6–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of June 29, July 6, 13, 20, 27, August 3, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 29, 2009

Tuesday, June 30, 2009

1 p.m. Affirmation Session (Public Meeting) (Tentative).

U.S. Department of Energy (High-Level Waste Repository); Appeals of First Prehearing Conference Order (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:05 p.m. Discussion/Possible Vote on Final Rule—Update to Waste Confidence Decision (Public Meeting) (Tentative) (Contact: Rochelle Bavol, 301–415–1651).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 6, 2009—Tentative

There are no meetings scheduled for the week of July 6, 2009.

Week of July 13, 2009—Tentative

There are no meetings scheduled for the week of July 13, 2009.

Week of July 20, 2009—Tentative

There are no meetings scheduled for the week of July 20, 2009.

Week of July 27, 2009—Tentative

There are no meetings scheduled for the week of July 27, 2009.

Week of August 3, 2009—Tentative

There are no meetings scheduled for the week of August 3, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 25, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–15515 Filed 6–26–09; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268.

Notice is hereby given that under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), 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.

Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's investment adviser. These procedures typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–SAR (17 CFR 249.330) describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that each of 757 [1] money market funds spends a total of approximately 410 hours [2] of professional time (at $193 per hour) [3] to record credit risk analyses and determinations regarding adjustable rate securities, asset backed securities and securities subject to a demand feature or guarantee, for a total of approximately $59,901,410. The staff further estimates that each of 9 new money market funds spends a total of 15.5 hours of director, legal, and support staff time at a total cost of approximately $50,487.30 to adopt procedures designed to stabilize the fund's NAV and guidelines regarding the delegation of certain responsibilities to the fund's adviser.[4] The staff further estimates that on average each of 189 money market funds spends a total of 2.4 hours of director and legal time at a total cost of approximately $442,260 to review and amend written procedures and guidelines each year.[5] Finally, the staff estimates that each of 13 money market funds that experience a change in certain eligibility standards for portfolio securities or an event of default or insolvency relating to portfolio securities spends a total of one and a half hours of professional legal time documenting board determinations and notifying the Commission regarding the event, for a total of $5265.00. Thus, Commission staff estimates the total annual burden of the rule's information collection requirements are 310,983 hours [6] at an annual cost of $60,399,422.[7]

The Commission staff estimate of 310,983 burden hours is a decrease from the previous estimate of 1,034,800 hours. The decrease is primarily attributable to the decrease in the number of money market funds and updated information from money market funds regarding hourly burdens, including significant differences in burden hours reported by the funds surveyed in this submission year than those reported by funds in prior submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The

[1] *See* Investment Company Institute, *Trends in Mutual Fund Investing: April 2009* (May 28, 2009), *http://www.ici.org/highlights/trends_04_09.* These include registered money market funds and series of registered funds.

[2] This average is based on discussions with individuals at money market funds and their advisers. The actual number of burden hours may vary significantly depending on the type and number of portfolio securities held by individual funds.

[3] The estimated hourly cost was based on the weighted average annual salaries reported for senior business analysts, accountants, floor supervisors, and portfolio managers in SIFMA's *Management & Professional Earnings in the Securities Industry 2008* (Sept. 2008), modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[4] This estimate is based on information from Lipper Inc.'s LANA database for the period of January 1, 2007 through December 31, 2008.

[5] For PRA purposes we assumed that on average 25% of money market funds would review and update their procedures on an annual basis.

[6] This estimate is based on the following calculation: 310,370 hours + 139.5 hours + 453.6 hours + 19.5 hours = 310,982.6 hours.

[7] A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality (*e.g.,* handwritten notes, computer disks, etc.). Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N–SAR are included in the PRA burden estimate for that form.

estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[8] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on a cost of $0.0051295 per dollar of assets under management for small funds, $0.0005041 per dollar assets under management for medium funds, and $0.0000009 per dollar of assets under management for large funds,[9] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $72.4 million per year.[10] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000132 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from $0 for small funds to $48.8 million for all large funds. Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($24.4 million) and for record preservation ($36.2 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission requests written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of 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 collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 24, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15399 Filed 6–29–09; 8:45 am]

BILLING CODE 8010–01–P

[8] The amount of assets under management in individual money market funds ranges from approximately $300,000 to approximately $162 billion.

[9] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[10] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $1 billion under management in small funds, $126.8 billion under management in medium funds and $3.7 trillion under management in large funds, the costs of preservation were estimated as follows: ((0.0051295 × $1 billion) + (0.0005041 × $126.8 billion) + (0.0000009 × $3.7 trillion) = $72.38 million.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60164; File No. SR–CBOE–2009–029]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Permanently Establish the Quarterly Option Series Program

June 23, 2009.

On May 7, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permanently establish its Quarterly Option Series pilot program (the ''QOS Program''). The proposed rule change was published for comment in the **Federal Register** on May 21, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

The Exchange established the QOS Program on a pilot basis on July 7, 2006.[4] The QOS Program allows CBOE to list and trade Quarterly Option Series, which expire at the close of business on the last business day of a calendar quarter. Under the QOS Program, CBOE may select up to five (5) currently listed exchange traded fund (''ETF'') or index option classes on which Quarterly Option Series may be opened. The Exchange has selected the following five ETF option classes to participate in the QOS Program: DIAMONDS Trust (DIA) options; Standard and Poor's Depositary Receipts/SPDRs (SPY) options; iShares Russell 2000 Index Fund (IWM) options; PowerShares QQQ Trust (QQQQ) options; and Energy Select SPDR (XLE) options. In addition, CBOE may also list Quarterly Option Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the following calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

For each class of ETF options selected for the QOS Program, the Exchange may list strike prices within $5 from the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59601 (March 19, 2009), 74 FR 13281.

[4] *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558, (July 17, 2006) (SR–CBOE–2006–65). The QOS Program has since been extended and is currently scheduled to expire on July 10, 2009. *See* Securities Exchange Act Release Nos. 56035 (July 10, 2007), 72 FR 38851, (July 16, 2007) (SR–CBOE–2007–70) (immediately effective rule change extending the QOS Program through July 10, 2008) and 58018 (June 25, 2008), 73 FR 38010 (July 2, 2008) (SR–CBOE–2008–62) (immediately effective rule change extending the QOS Program through July 10, 2009).

previous day's closing price of the underlying security at the time of initial listing. Subsequently, the Exchange may list up to 60 additional strike prices that are within thirty percent (30%) of the previous day's close, or more than 30% away from the previous day's close provided demonstrated customer interest exists for such series.[5]

The Exchange has also adopted a delisting policy with respect to QOS in ETF options.[6] On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having either: (i) A strike price higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) a strike price lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the foregoing, the delisting policy also provides that customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted by the Exchange.

The Exchange also may list Quarterly Option Series based on an underlying index pursuant to similar provisions in Rule 24.9. There are two noteworthy distinctions between the rules for listing QOS based on an ETF versus QOS based on an index. First, whereas the initial listing of QOS based on an underlying ETF is restricted to strike prices within $5 from the previous day's closing price of the underlying security, the initial listing of strikes for QOS based on an underlying index is restricted to: (i) A price that is within thirty percent (30%) of the previous day's close, and (ii) no more than five strikes above and five strikes below the value of the underlying index. Second, whereas the Exchange may list up to 60 additional strike prices for each QOS based on an ETF, there is no firm cap on the additional listing of strikes for QOS based on an underlying index; rather, additional strike prices may be listed provided the new listings do not result in more than five strike prices on the same side of the underlying index value as the new listings. To date, the Exchange has not listed any Quarterly Option Series based on an underlying index.

In support of its proposal to permanently establish the QOS Program, and as required by the terms of the Pilot Program,[7] the Exchange submitted to the Commission a report detailing the Exchange's experience with the QOS Program (the ''Report'').[8] In addition to the Report, the Exchange represented that it has not experienced any capacity-related problems with respect to Quarterly Option Series, and that it has the necessary systems capacity to continue to support the option series listed under the QOS Program. Finally, the Exchange stated its belief that there is sufficient investor interest in, and demand for, the QOS Program to warrant its permanent approval.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the QOS Program, as evidenced by the Report, has furthered the public interest by offering investors an alternative means of managing their risk exposures and carrying out their investment objectives. The Commission notes CBOE's representation that there is sufficient investor interest in the QOS Program to warrant its permanent approval. The Commission further notes CBOE's representations that it has not experienced any capacity-related problems with respect to Quarterly Option Series, and that the Exchange has the necessary system capacity to continue to support the option series listed under the QOS Program. Accordingly, the Commission finds that the proposed QOS Program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid the unnecessary proliferation of option series that could compromise systems capacity. The Commission expects CBOE to continue to monitor the trading and quotation volume associated with the QOS Program, and the effect the QOS Program has on the capacity of the Exchange's, OPRA's, and vendors' systems. In addition, the Commission expects the Exchange, consistent with its QOS delisting policy, to continue to monitor for option series with little or no open interest and trading activity and to act promptly to delist such options in order to mitigate the number of options series with no open interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–2009–029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15350 Filed 6–29–09; 8:45 am]

BILLING CODE 8010–01–P

[5] ''Demonstrated customer interest'' includes interest expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account may not be considered when determining customer interest under this provision.

[6] *See* Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR–CBOE–2007–96).

[7] *See* Securities Exchange Act Release No. 54123, *supra* note 4.

[8] The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60165; File No. SR–BX–2009–029]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Flash and Cancel Order

June 23, 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 June 17, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change, as amended, as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to establish a Flash and Cancel order. The Exchange has filed this proposal under Exchange Act Rule 19b–4(f)(6)[4] and, as such, the proposal is immediately effective.

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://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

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

Nasdaq OMX BX is proposing to establish a new voluntary Flash and Cancel Order type. A Flash and Cancel Order will provide an optional pre-cancellation display period for market and marketable limit orders so designated. Under the proposal, market and marketable limit orders designated as Flash and Cancel Orders will, after first executing to the maximum extent possible in Nasdaq OMX BX's book, have their unexecuted portions displayed for potential execution at the NBBO such that a trade-through will not occur, to Nasdaq OMX BX market participants and market data vendors for a period of time determined by Nasdaq OMX BX which will not exceed one-half of one second. If any unfilled balance remains after such display, such marketable unfilled balance shall be cancelled back to the entering party, and such non-marketable unfilled balance shall be placed on the book for potential execution. As with other Nasdaq OMX BX order types, the attributes of the Flash and Cancel Order may be combined with all Nasdaq OMX BX order types. Nasdaq OMX BX will provide an electronic method to distinguish the Flash Order during the flash period from the System's protected quote under Regulation NMS.

Nasdaq OMX BX notes that flash and cancel order functionality is already in use by other markets that such functionality can be expected to provide Nasdaq OMX BX system users with greater control over their trading. Except for the behavior of the Flash and Cancel Order described here, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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. Nasdaq OMX BX notes that similar functionality has already been found to be consistent with the Act by the Commission.[7]

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–029 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–2009–029. 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

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR–CBOE–2004–21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR–CBOE–2008–123).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2009–029 and should be submitted on or before July 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15351 Filed 6–29–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 6679]

Notice of Request for Public Comment and Submission to OMB of Proposed Collection of Information

Title: 30-Day Notice of Proposed Information Collection: DS–3077, Request for Entry into Children's Passport Issuance Alert Program, OMB 1405–0169.

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Entry into Children's Passport Issuance Alert Program.
- *OMB Control Number:* 1405–0169.
- *Type of Request:* Revision.
- *Originating Office:* CA/OCS/PRI.
- *Form Number:* DS–3077.
- *Respondents:* Concerned parents or their agents, institutions, or courts.
- *Estimated Number of Respondents:* 4,420.
- *Estimated Number of Responses:* 4,420.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 2,210 hrs.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 30, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Derek A Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The information requested will be used to support entry of a minor's (an unmarried person under 18) name into the Children's Passport Issuance Alert Program (CPIAP). CPIAP provides a mechanism for parents or other persons with legal custody of a minor to obtain information regarding whether the Department has received a passport application for the minor. This program was developed as a means to prevent international abduction of a minor or to help prevent other travel of a minor without the consent of a parent or legal guardian. If a minor's name and other identifying information has been entered into the CPIAP, when the Department receives an application for a new, replacement, or renewed passport for the minor, the application will be placed on hold for up to 60 days and Passport Services will attempt to notify the requestor of receipt of the application. Form DS–3077 will be primarily submitted by a parent or legal guardian of a minor.

Methodology

The completed form DS–3077 may be submitted to Passport Services by e-mail, fax, or mail.

Dated: June 18, 2009.

Mary Ellen Hickey,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–15440 Filed 6–29–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hunterdon County, NJ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (NOI) published on November 24, 2006 (71 FR 67955) to prepare an Environmental Impact Statement (EIS) for a proposed South Branch Parkway project in Hunterdon County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Roger S. Lall, Director of Engineering, Federal Highway Administration, New Jersey Division Office, 840 Bear Tavern Road, Suite 310, West Trenton, New Jersey 08628; Telephone: (609) 637–4200 or Elkins Green, Director, Division of Environmental Resources, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625; Telephone: (609) 530–8075.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Jersey Department of Transportation (NJDOT), is rescinding the NOI to prepare an EIS for a project that had been proposed to construct the South Branch Parkway in Raritan Township, Hunterdon County, New Jersey, Federal Project No. HPP–0037(130).

The proposed action included the construction of a limited access highway on new location for a distance of approximately 3.7 miles; extending from a proposed intersection at

[10] 17 CFR 200.30–3(a)(12).

Voorhees Corner Road and Route 31, northward to a proposed intersection at a point approximately 0.5 mile north of the existing intersection of Route 31 and Bartles Corner Road. This project had multiple purposes including:

Providing an alternative to Route 31 for north-south travel through the Flemington-Raritan area,

Reducing local and regional traffic congestion on existing Route 31,

Providing the initial investment in a long-term Integrated Land Use and Transportation Plan that would enhance the overall connectivity with the local roadway network, leading to a more balanced transportation network and land use pattern in the corridor.

The NOI is being rescinded because NJDOT has conducted further analysis and has determined that key elements of the purpose and need can be met by making improvements to existing Route 31 rather than pursuing construction of the South Branch Parkway. There has been a change in the planned approach to this project, which calls for immediate improvements to Route 31. Traffic studies conducted after the completion of recently constructed improvements to Route 31 beyond the immediate project area, have determined that these improvements, in conjunction with the future improvements to Route 31, will relieve current congestion on Route 31. Depending on the extent of development in the corridor, future improvements may be needed of the South Branch Parkway. The Department has determined that a substantial investment of resources is not warranted at this time when a less costly option is available that also has a potential for significantly less of an impact to the environment.

The FHWA, in cooperation with NJDOT will suspend the environmental analyses and EIS for the South Branch Parkway. Improvement to reduce local and regional traffic congestion on Route 31 will be further analyzed. Coordination with the public will continue during project development.

(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.)

Issued on June 24, 2009.

Roger S. Lall,

Director of Engineering.

[FR Doc. E9–15402 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Rickenbacker International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 37.016 acres of airport property for the proposed development bulk warehouse/distribution facilities as a component of the Rickenbacker Global Logistics Park. The land was acquired by the Rickenbacker Port Authority through two Quitclaim Deeds dated March 30, 1984 from the Administrator of General Services for the United States of America and May 11, 1999 from the United States of America, acting by and through the Secretary of the Air Force. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Stephanie Swann, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734)–229–2945/FAX Number: (734)–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property situated in the State of Ohio, County of Pickaway, Townships of Harrison and Madison, lying in Section 13, Township 3, Range 22, and Section 18, Township 10, Range 21, Congress Lands, being part of the remainder of the original 2995.065 acre tract conveyed as Tract 1 to Columbus Municipal Airport Authority by deed of record in Official Record 514, Page 2561, (all references are to the records of the Recorder's Office, Pickaway County, Ohio) and being more particularly described as follows:

(Legal Description of Property)

Beginning, for reference, at a 1 inch Iron Pin capped ''7159-ms consultant,'' found at the intersection of the centerline of Rickenbacker Parkway East (140 feet wide), as in Plat Cabinet 2, Slide 127, with the line common to said Harrison Township and Madison Township, said common line being a westerly line of the remainder of said original 2995.065 acre tract;

Thence North 03°47′26″ East, a distance of 941.68 feet, (passing a ⅝ inch rebar capped ''7159-ms consultants'' found at 70.00 feet) across said Rickenbacker Parkway East, and said original 2995.065 acre tract, with said Township Line, to an iron pin set at the TRUE POINT OF BEGINNING;

Thence across said original 2995.065 acre tract, the following courses and distances:

North 86°24′00″ West, a distance of 538.97 feet, to an iron pin set;

South 47°50′49″ West, a distance of 31.68 feet, to an iron pin set;

With a curve to the left, having a central angle of 88°05′50″, a radius of 80.00 feet, an arc length of 123.01 feet, and a chord which bears North 86°12′06″ West, a chord distance of 111.24 feet, to an iron pin set;

North 40°15′01″ West, a distance of 30.93 feet, to an iron pin set;

North 86°24′00″ West, a distance of 1078.20 feet, to an iron pin set;

North 45°42′45″ East, a distance of 1808.11 feet, to an iron pin set;

South 44°30′28″ East, a distance of 1099.43 feet, to an iron pin set;

South 03°24′05″ West, a distance of 607.19 feet, to an iron pin set;

North 86°24′00″ West, a distance of 261.07 feet, to the TRUE POINT OF BEGINNING, containing 37.016 acres, more or less, of which 30.287 acres lie within Parcel Number Dl2–0–003–00–250–00, 2.441 acres lie within Parcel Number Dl2–0–003–00–253–0l, 3.797 acres lie within Parcel Number F16–0–003–00–001–0l and 0.491 acre lie within Parcel Number FiG–0–003–00–001–01.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on Ohio State Plane Coordinate System-South Zone as per NAD 83 (1986 adjustment), Control for bearings was North 21°27′15″ East for a portion of the centerline of Canal Road Between Franklin County Geodetic Survey Monument 5164 and 5165, as established by the Franklin County Engineering Department using Global Positioning System procedures

and equipment. Issued in Romulus, Michigan on May 29, 2009.

Matthew J. Thys,

Manager, Detroit Airports District Office FAA, Great Lakes Region.

[FR Doc. E9–15319 Filed 6–29–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Charter and Filing Letters; Correction

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division.

ACTION: Correction to a notice of Renewal Charter and Filing Letters.

SUMMARY: This document contains a correction to a notice of renewal charter and filing letters, which was filed and available for public inspection with the Office of the Federal Register on June 24, 2009 and published on June 25, 2009. The renewal charter was filed on June 16, 2009, with the Committee on Finance of the United States Senate, the Committee on Ways and Means of the U.S. House of Representatives, and the Library of Congress.

SUPPLEMENTARY INFORMATION:

Need for Correction

As submitted to the **Federal Register**, the renewal charter is missing as well as the previously mentioned filing letters.

Correction of Filing

Accordingly, the filing of the renewal charter is corrected by including the charter and the charter's filing letters.

Dated: June 24, 2009.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

BILLING CODE 4830–01–P

CHARTER

ADVISORY COMMITTEE ON TAX EXEMPT AND GOVERNMENT ENTITIES OF THE INTERNAL REVENUE SERVICE

This charter is prepared and filed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App II.

1. Committee's Official Title. The Advisory Committee on Tax Exempt and Government Entities (ACT).

2. Authority. The establishment and operation of the Committee is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of Internal Revenue. The ACT is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

3. Objective and Scope of Activities. The ACT is established to provide an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bond, and federal, state, local and Indian tribal government issues between officials of the Internal Revenue Service (IRS) and representatives of the employee plans, exempt organizations, tax-exempt bond, and federal, state, local and Indian tribal government communities; and to enable the IRS to receive regular input with respect to the development and implementation of tax administration issues affecting those communities. The ACT members will present in an organized and constructive fashion the interested public's observations about current or proposed Tax Exempt and Government Entities Division programs and procedures and will suggest improvements.

4. Description of Duties. The ACT's duties are to research, analyze, consider and make recommendations on a wide range of tax administration issues relating to employee plans, exempt organizations, tax exempt bonds, and federal, state, local and Indian tribal governments.

5. Official to Whom the Committee Reports. The ACT advises and reports to the Commissioner, Tax Exempt and Government Entities.

6. Support Services. The IRS provides the necessary support services for ACT.

7. Estimated Annual Operating Cost and Staff Years. The estimated annual operating costs are $106,000 and 1 staff year. Committee members are not paid for their time or services. Members will be reimbursed for their travel-related expenses to attend a public meeting and scheduled working meetings, in accordance with 5 U.S.C. § 5703 (as for persons employed intermittently in government service). Members are responsible for travel expenses related to any unscheduled working sessions.

Except as expressly stated above, the Government will not be responsible for any expenses incurred by or on behalf of ACT members as a result of their application to, membership in, and activities on behalf of the ACT.

8. Designated Federal Officer (DFO). The DFO (or designee) is a full-time or permanent part-time federal employee who will be appointed by the Commissioner, Tax Exempt and Government Entities and shall ensure compliance with the requirements of FACA and its implementing regulations. The DFO will approve or call all of the advisory committee meetings, prepare and approve all meeting agendas, attend all committee meetings, adjourn any meeting when determined to be in the public interest, and chair meetings when directed by the Commissioner, Tax Exempt and Government Entities.

9. Estimated Number and Frequency of Meetings. The ACT will normally hold one 1-day public meeting, four 2-day working meetings, and an orientation session each year. Other meetings will be scheduled as necessary.

10. Duration. The ACT is a continuing advisory committee.

11. Termination. The authority to utilize the ACT expires two years from the date this charter is filed.

12. Membership. The Commissioner, Tax Exempt and Government Entities Division will assure that the size and operational representation of the ACT results in a balanced membership and includes representatives from the employee plans, exempt organizations, tax-exempt bond, and federal, state, local and Indian tribal government communities. Nominations will be solicited from professional and public interest groups and the general public. ACT members are appointed by the Department of the Treasury upon recommendation of the Commissioner, IRS and serve a term of two years, with the possibility of renewal for an additional year of service, with the approval of the Commissioner, Tax Exempt and Government Entities Division.

13. Subcommittees. The DFO has the authority to create subcommittees that must report back to ACT. The subcommittees may not provide advice or work products directly to the IRS.

14. Recordkeeping. The records of the ACT and its subcommittees will be handled in accordance with the General Records Schedule. The records will be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

15. Filing Date. The filing date of this charter is JUN 1 6 2009.

Approved:

MAY 7 2009

Douglas H. Shulman
Commissioner of Internal Revenue

Date

Approved:

Jun 12, 2009

Michael D. Duffy
Deputy Assistant Secretary for Information Systems
and Chief Information Officer

Date

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
JUN 16 2009

The Honorable Max Baucus
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Secretary of the Treasury, I am transmitting for filing with the Committee on Finance, the renewal charter for the "Advisory Committee on Tax Exempt and Government Entities."

In accordance with the Federal Advisory Committee Act, Public Law 92-463, a copy of the renewal charter is enclosed. The renewal charter is also being filed with the Committee on Ways and Means of the U.S. House of Representatives.

Sincerely,

Michael D. Duffy
Deputy Assistant Secretary for Information Systems
and Chief Information Officer

Enclosure

cc: Senator Charles Grassley
Ranking Member

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 16 2009

The Honorable Charles B. Rangel
Chairman, Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the Secretary of the Treasury, I am transmitting for filing with the Committee on Ways and Means of the U.S. House of Representatives, the renewal charter for the "Advisory Committee on Tax Exempt and Government Entities."

In accordance with the Federal Advisory Committee Act, Public Law 92-463, a copy of the renewal charter is enclosed. The renewal charter is also being filed with the Committee on Finance of the United States Senate.

Sincerely,

Michael D. Duffy
Deputy Assistant Secretary for Information Systems
and Chief Information Officer

Enclosure

cc: Representative David Camp
Ranking Member

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 16 2009

Mr. Richard Yarnall
Library of Congress
Federal Advisory Committee Desk
Government Documents Section
101 Independence Avenue, SE
Washington, DC 20540-4172

Dear Mr. Yarnall:

Under the provisions of the Federal Advisory Committee Act, Public Law 92-463, I am filing the renewal charter for the "Advisory Committee on Tax Exempt and Government Entities."

I have enclosed a copy of the renewal charter, along with copies of letters filing the renewal charter with the Committee on Finance of the United States Senate and the Committee on Ways and Means of the U.S. House of Representatives.

Sincerely,

Michael D. Duffy
Deputy Assistant Secretary for Information Systems
and Chief Information Officer

Enclosures

[FR Doc. E9–15428 Filed 6–25–09; 4:15 pm]
BILLING CODE 4830–01–C

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Federal Register

Vol. 74, No. 124

Tuesday, June 30, 2009

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